

No. 16102 ✓

United States  
Court of Appeals  
for the Ninth Circuit

SEE ALSO  
3088

INTERNATIONAL BROTHERHOOD OF  
TEAMSTERS, CHAUFFEURS, WARE-  
HOUSEMEN AND HELPERS OF AMER-  
ICA, LOCAL No. 839, and INTERNA-  
TIONAL UNION OF OPERATING EN-  
GINEERS, LOCAL No. 370,

Appellants,

vs.

MORRISON-KNUDSEN COMPANY, INC., a  
Corporation,

Appellee.

Transcript of Record  
In Three Volumes

Volume I  
(Pages 1 to 378)

FILED

DEC 12 1958

PAUL P. O'BRIEN, CLERK

Appeal from the United States District Court for the  
Eastern District of Washington,  
Southern Division.















No. 16102

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United States  
Court of Appeals  
for the Ninth Circuit

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INTERNATIONAL BROTHERHOOD OF  
TEAMSTERS, CHAUFFEURS, WARE-  
HOUSEMEN AND HELPERS OF AMER-  
ICA, LOCAL No. 839, and INTERNA-  
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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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United States District Court for the Eastern  
District of Washington, Southern Division

No. 1105

MORRISON-KNUDSEN COMPANY, INC., a  
Corporation,

Plaintiff,

vs.

INTERNATIONAL BROTHERHOOD OF  
TEAMSTERS, CHAUFFEURS, WARE-  
HOUSEMEN AND HELPERS OF AMER-  
ICA LOCAL No. 839; JOINT COUNCIL  
OF TEAMSTERS No. 28; WESTERN CON-  
FERENCE OF TEAMSTERS; INTERNA-  
TIONAL UNION OF OPERATING ENGI-  
NEERS, LOCAL No. 370; and INTERNA-  
TIONAL UNION OF OPERATING ENGI-  
NEERS, AFL,

Defendants.

## COMPLAINT

Comes now Morrison-Knudsen Company, Inc., a  
corporation and for a cause of action against the  
Defendants, and each of them alleges:

### I.

That at all times herein mentioned Morrison-  
Knudsen Company, Inc., was, and it now is, a cor-  
poration, duly organized, existing and doing busi-  
ness under and by virtue of the laws of the State  
of Delaware with its principal office and place of



business at Boise, Idaho, and during the times herein mentioned it was and now is qualified as and doing business as a foreign corporation within the State of Washington and in Benton County thereof, within the Southern Division of the above-entitled District and Court. That in the activities herein-after mentioned Plaintiff was engaged in an industry affecting commerce as defined by the Labor Management Relations Act of 1947 of the United States and the National Labor Relations Act of the United States. [1\*]

## II.

That the Defendant, Local No. 839 of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, which will be hereafter referred to merely as Local No. 839, at all times herein mentioned was, and it now is, a voluntary unincorporated association and labor union, and that said Local No. 839 during all of the times hereinafter mentioned acted as the representative and bargaining agent for its members employed in all Heavy, Highway and Engineering Construction Work within the Eastern portion of the State of Washington, East of the 120th Meridian, including Benton County, and certain portions of the State of Idaho.

That the Defendant Joint Council of Teamsters No. 28, which will hereafter be referred to merely as Joint Council No. 28, is a voluntary unincorporated associated, composed of Local No. 839 and

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\*Page numbering appearing at foot of page of original Certified Transcript of Record.



other Local Unions of the same International within the State of Washington, and in all things hereinafter alleged said Local No. 839 acted under the direction, sanction and approval of said Joint Council No. 28 as well as under the direction, sanction and approval of the Western Conference of Teamsters as hereinafter alleged.

That the Defendant Western Conference of Teamsters, which will hereafter be referred to merely as Western Conference, is a voluntary unincorporated association, composed of Joint Council of Teamsters No. 28 and other similar Joint Councils located within the Western states of the United States, and in all things hereinafter alleged Local 839 and Joint Council No. 28 acted under the direction, sanction and approval of said Western Conference.

That the Defendant International Union of Operating Engineers, Local No. 370, which will hereafter be referred to merely as Operating Engineers Local No. 370, is a voluntary [2] unincorporated association and labor union, and during all times herein mentioned said Operating Engineers, Local No. 370, through its officers and Business Manager, acted as representative and bargaining agent for its members employed in all Heavy, Highway and Engineering Construction Work within the Eastern portion of the State of Washington, East of the 120th Meridian, including Benton County, and certain portions of the State of Idaho.



That the Defendant International Union of Operating Engineers, AFL, is, and at all times herein mentioned, was a voluntary unincorporated association, composed of all the Locals of the International within the United States, including Operating Engineers Local No. 370, and in all things hereinafter mentioned the Operating Engineers Local No. 370, and its officers and Business Manager, acted under and in accordance with the direction, sanction and approval of said International Union of Operating Engineers, AFL, which will hereafter be referred to merely as International Union.

That each of said Defendants heretofore named, either has and maintains its principal office, or has offices or agents engaged in representing it or acting for its employee members within the Eastern District of Washington.

### III.

That this action is brought and prosecuted pursuant to, and in accordance with, and the jurisdiction of the Court is based upon the provisions of the Labor Management Relations Act of 1947, and more particularly Section 301 thereof, otherwise known as 29 USCA Section 185. That the members of Defendant Local No. 839 and of Defendant Operating Engineers Local No. 370, which were employed by Plaintiff, as hereinafter mentioned, were "employees in an industry affecting commerce as defined" in the Labor Management Relations Act of 1947 of the [3] United States and the National Labor Relations Act of the United States.



#### IV.

That heretofore and on or about the 25th day of November, 1955, Plaintiff entered into a Contract with the United States Atomic Energy Commission, for the construction of Pumping Plant Additions, Office Additions and Modifications at the Hanford Atomic Products Operation within Benton County, State of Washington, and thereafter on or about November 28, 1955, commenced the performance of said work, and for the purpose of the performance of said Contract employed upon the project numerous members of Local 839 and of Operating Engineers Local No. 370.

#### V.

That at all times herein mentioned, the Plaintiff was, and it now is, a member in good standing of Associated General Contractors of America, Inc., Spokane Chapter, and as such member Plaintiff assigned and delegated to said Associated General Contractors of America, Inc., Spokane Chapter, its bargaining rights, covering all employee members of Local 839 and of Operating Engineers Local No. 370, as employed by Plaintiff within the area of said Locals, including Benton County, as engaged in Heavy, Highway and Engineering Construction Work. Pursuant to such delegated authority, and on behalf of Plaintiff as one of its members and for the account and benefit of Plaintiff, the Associated General Contractors of America, Inc., Spokane Chapter, as of December 19, 1955, negotiated and entered into a Labor Agreement with Local No.



839, a copy of which is attached hereto as Exhibit A and is by this reference thereto incorporated herein the same as though set forth at length, and under date of December 24, 1955, negotiated and entered into a Labor Agreement with Operating Engineers Local [4] No. 370, a copy of which is attached hereto as Exhibit B and is by this reference thereto incorporated herein and made a part hereof the same as though set forth at length, and which said Agreements, by their express terms, are stated to "cover all Heavy, Highway and Engineering Construction Work in the following counties, or parts of counties, East of the 120th Meridian: \* \* \* Benton \* \* \*" and to provide in Article VIII of the Agreement with Local 839 and in Article IX of the Agreement with Operating Engineers Local 370 that:

"Section 3. There shall be no special job agreements" and in Article VIII of the Agreement with Local 839 and in Article VII of the Agreement with Operating Engineers Local 370 entitled No Strike—No Lockout:

"It is mutually agreed that there shall be no strikes, lockouts, or other slow downs or cessation of work authorized by either party on account of any labor differences pending the full utilization of the grievance machinery set up in Article (IX) (X)."

Said Agreements became effective as of January 1, 1956, and have remained in full force and effect



at all times since, except as breached by Defendants as hereinafter alleged. That prior to the execution of the Agreement, Exhibit A, by Local 839, and as a part of the fixed procedure within the Teamsters Union, the said Agreement was submitted to and approved for execution by the Defendants Joint Council No. 28 and Western Conference. That prior to the execution of the Agreement, Exhibit B, by Operating Engineers Local No. 370, and as a part of the fixed procedure within the International Union, said Agreement was submitted to and approved for execution by said International Union.

## VI.

That notwithstanding the terms and provisions of said Labor Agreements, Exhibits A and B hereto, the Defendants Local 839 and Operating Engineers Local No. 370, prior to the 22nd [5] day of March, 1956, and in direct violation of said Agreements, jointly demanded of Plaintiff, through its bargaining agent, Associated General Contractors of America, Inc., Spokane Chapter, the payment of so-called "isolation pay" in the sum of \$2.62 per day for their members working for Plaintiff in the performance of the Contract mentioned in Paragraph IV hereof, over and above the wage scales as provided for by said Agreements, and further jointly demanded free transportation for their members working upon said project from the North Richland Bus Terminal to the site of work within the Hanford Atomic Products Operation area as a



“special job agreement,” which unlawful and illegal demand was by the Associated General Contractors of America, Inc., Spokane Chapter, acting on behalf of Plaintiff, refused. Upon the refusal of Plaintiff, through its bargaining agent and representative aforesaid, to accede to the unlawful and illegal demands of the Defendant Locals, and in violation of the No Strike provisions of said Agreements, Exhibits A and B, the Defendants’ Local No. 839 and Operating Engineers Local No. 370, acting in concert and agreement by and through their respective officers and agents, without utilizing the grievance machinery as set up in said Agreements, Exhibits A and B, and after first receiving the sanction, approval and consent of Joint Council No. 28, Western Conference and International Union, through their respective officers and representatives, caused their membership to strike the work of Plaintiff under its Contract with the United States Atomic Energy Commission, as mentioned in Paragraph IV hereof, and to picket the project, which strike and picketing has at all times since continued and is now continuing notwithstanding the written demand and request of Plaintiff that said members return to their jobs, a copy of which is attached hereto as Exhibit C, and which was sent to Local No. 839, Joint Council No. 28, Western Conference, [6] Operating Engineers Local No. 370 and International Union on April 27, 1956, and received by said Defendants on or about April 30, 1956.



VII.

That by reason of the breach by Defendants of the terms and provisions of the Labor Agreements, Exhibit A and Exhibit B hereto, as heretofore alleged, or the inducing of such breach by Defendants, as heretofore alleged, and the resulting shut down of the operations of Plaintiff caused solely thereby, the Plaintiff suffered damages to April 30, 1956, in the sum of \$638,500.00 and has at all times since continued to suffer, and will continue to suffer until such strike is called off, the membership of Defendant Unions return to work and the effects of said unlawful and illegal strike have been fully eliminated, damages in the minimum amount of \$13,000.00 per calendar day, and together with additional general damages which are not yet fully ascertainable, but which will be supplied as soon as ascertained and prior to the trial of this action.

Wherefore, Plaintiff prays for judgment against the Defendants, and each of them, for the sum of \$638,500.00, together with such additional amounts as may be found due to the Plaintiff from Defendants, and each of them, by way of damages upon the trial of this action; for Plaintiff's costs and disbursements herein to be taxed in the manner provided by law and the Rules of Court, and for such other equitable and legal relief by way of Decree or Judgment herein as may be thought and found proper by the Court.

ALLEN, DeGARMO & LEEDY,

By /s/ GERALD DeGARMO,



DORSEY &amp; HAIGHT,

By /s/ ELI E. DORSEY,  
Counsel for Plaintiff.

[Endorsed]: Filed May 8, 1956. [7]

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[Title of District Court and Cause.]

## AMENDED COMPLAINT

Comes now Morrison-Knudsen Company, Inc., a corporation, and for its Amended Complaint herein and as a cause of action against the Defendants and each of them complains and alleges:

## I.

That at all times herein mentioned Morrison-Knudsen Company, Inc., was, and it now is, a corporation, duly organized, existing and doing business under and by virtue of the laws of the State of Delaware with its principal office and place of business at Boise, Idaho, and during the times herein mentioned it was and now is qualified as and doing business as a foreign corporation within the State of Washington and in Benton County thereof, within the Southern Division of the above-entitled District and Court. That in the activities hereinafter mentioned Plaintiff was engaged in an industry affecting commerce as defined by the Labor Management Relations Act of 1947 of the United



States and the National Labor Relations Act of the United States. [40]

## II.

That the Defendant, Local No. 839 of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, which will be hereafter referred to merely as Local No. 839, at all times herein mentioned was, and it now is, a voluntary unincorporated association and labor union, and that said Local No. 839 during all of the times hereinafter mentioned acted as the representative and bargaining agent for its members employed in all Heavy, Highway and Engineering Construction Work within the Eastern portion of the State of Washington, East of the 120th Meridian, including Benton County, and certain portions of the State of Idaho.

That the Defendant, Joint Council of Teamsters No. 28, which will hereafter be referred to merely as Joint Council No. 28, is a voluntary unincorporated association, composed of Local No. 839 and other Local Unions of the same International within the State of Washington, and in all things hereinafter alleged said Local No. 839 acted under the direction, sanction and approval of said Joint Council No. 28 as well as under the direction, sanction and approval of the Western Conference of Teamsters as hereinafter alleged.

That the Defendant, Western Conference of Teamsters, which will hereafter be referred to merely as Western Conference, is a voluntary unin-



corporated association, composed of Joint Council of Teamsters No. 28 and other similar Joint Councils located within the Western States of the United States, and in all things hereinafter alleged Local 839 and Joint Council No. 28 acted under the direction, sanction and approval of said Western Conference.

That the Defendant, International Union of Operating Engineers, Local No. 370, which will hereafter be referred to merely as Operating Engineers Local No. 370, is a voluntary [41] unincorporated association and labor union, and during all times herein mentioned said Operating Engineers, Local No. 370, through its officers and Business Manager, acted as representative and bargaining agent for its members employed in all Heavy, Highway and Engineering Construction Work within the Eastern portion of the State of Washington, East of the 120th Meridian, including Benton County, and certain portions of the State of Idaho.

That each of said Defendants heretofore named, either has and maintains its principal office, or has offices or agents engaged in representing it or acting for its employee members within the Eastern District of Washington.

### III.

That this action is brought and prosecuted pursuant to, and in accordance with, and the jurisdiction of the Court is based upon the provisions of the Labor Management Relations Act of 1947, and more



particularly Section 301 thereof, otherwise known as 29 USCA Section 185. That the members of Defendant Local No. 839 and of the Defendant Operating Engineers Local No. 370, which were employed by Plaintiff, as hereinafter mentioned, were "employees in an industry affecting commerce as defined" in the Labor Management Relations Act of 1947 of the United States and the National Labor Relations Act of the United States.

#### IV.

That heretofore and on or about the 25th day of November, 1955, Plaintiff entered into a Contract with the United States Atomic Energy Commission, for the construction of Pumping Plant Additions, Office Additions and Modifications at the Hanford Atomic Products Operation within Benton County, State of Washington, and thereafter on or about November 28, 1955, commenced the performance of said work, and for the [42] purpose of the performance of said Contract employed upon the project numerous members of Local 839 and of Operating Engineers Local No. 370.

#### V.

That at all times herein mentioned, the Plaintiff was and it now is a member in good standing of Associated General Contractors of America, Inc., Spokane Chapter, and as such member Plaintiff assigned and delegated to said Associated General Contractors of America, Inc., Spokane Chapter, its bargaining rights, covering all employee members



of Local 839 and of Operating Engineers Local No. 370, as employed by Plaintiff within the area of said Locals, including Benton County, as engaged in Heavy, Highway and Engineering Construction Work. Pursuant to such delegated authority, and on behalf of Plaintiff as one of its members and for the account and benefit of Plaintiff, the Associated General Contractors of America, Inc., Spokane Chapter, as of December 19, 1955, negotiated and entered into a Labor Agreement with Local No. 839, a copy of which is attached to the original Complaint herein as Exhibit "A" and is by this reference thereto incorporated herein the same as though set forth at length, and under date of December 24, 1955, negotiated and entered into a Labor Agreement with Operating Engineers Local No. 370, a copy of which is attached to the original Complaint herein as Exhibit "B" and is by this reference thereto incorporated herein and made a part hereof the same as though set forth at length, and which said Agreements, by their express terms, are stated to "cover all Heavy, Highway and Engineering Construction Work in the following counties, or parts of counties, East of the 120th Meridian: \* \* \* Benton \* \* \*" and to provide in Article VIII of the Agreement with Local 839 and in Article IX of the Agreement with Operating Engineers Local 370 that: [43]

"Section 3. There shall be no special job agreements" and in Article VIII of the Agreement with Local 839 and in Article VII of the Agreement



with Operating Engineers Local 370 entitled No Strike-No Lockout:

“It is mutually agreed that there shall be no strikes, lockouts, or other slow downs or cessation of work authorized by either party on account of any labor differences pending the full utilization of the grievance machinery set up in Articles (IX) (X).”

Said Agreements became effective as of January 1, 1956, and have remained in full force and effect at all times since, except as breached by Defendants as hereinafter alleged. That prior to the execution of the Agreement, Exhibit “A,” by Local 839, and as a part of the fixed procedure within the Teamsters Union, the said Agreement was submitted to and approved for execution by the Defendants Joint Council No. 28 and Western Conference.

## VI.

That notwithstanding the terms and provisions of said Labor Agreements, Exhibits “A” and “B,” heretofore mentioned, the Defendants Local 839 and Operating Engineers Local No. 370, prior to the 22nd day of March, 1956, and in direct violation of said Agreements, jointly demanded of Plaintiff, through its bargaining agent, Associated General Contractors of America, Inc., Spokane Chapter, the payment of so-called “isolation pay” in the sum of \$2.62 per day for their members working for Plaintiff in the performance of the Contract mentioned in Paragraph IV hereof, over and above the wage



scales as provided for by said Agreements, and further jointly demanded free transportation for their members working upon said project from the North Richland Bus Terminal to the site of work within the Hanford Atomic Products Operation area as a "special job agreement," which unlawful and illegal demand was by the Associated General Contractors of America, Inc., Spokane Chapter, acting on behalf of Plaintiff, refused. Upon the refusal of Plaintiff, through its bargaining [44] agent and representative aforesaid, to accede to the unlawful and illegal demands of the Defendant Locals, and in violation of the No Strike provisions of said Agreements, Exhibits "A" and "B," the Defendants Local No. 839 and Operating Engineers Local No. 370, acting in concert and agreement by and through their respective officers and agents, without utilizing the grievance machinery as set up in said Agreements, Exhibits "A" and "B," and after first receiving the sanction, approval and consent of Joint Council No. 28 and Western Conference, through their respective officers and representatives, caused their membership to strike the work of Plaintiff under its Contract with the United States Atomic Energy Commission, as mentioned in Paragraph IV hereof, and to picket the project, which strike and picketing continued (notwithstanding the written demand and request of Plaintiff that said members return to their jobs, a copy of which is attached to the original Complaint herein as Exhibit "C" and which is by this reference thereto incorporated herein the same as though set forth at



length and which was sent to Local No. 839, Joint Council No. 28, Western Conference and Operating Engineers Local No. 370 and received by said Defendants on or about April 30, 1956), until June 6, 1956, at which time the Defendants agreed to resume work only upon the illegal demand and condition which was accompanied by the threat of the continuation of said illegal and unlawful strike that Plaintiff, through the Associated General Contractors of America, Spokane Chapter, continue in effect the claimed "status quo" as it was alleged by said Defendants to have existed on March 21, 1956, and submit to a hearing before the Atomic Energy Labor Management Relations Panel. Plaintiff, through said Associated General Contractors of America, Spokane Chapter, and under said illegal demand, condition and threat of strike acquiesced in such demands and conditions without prejudice to its contention [45] and position the continued payment of isolation pay and furnishing of bus transportation were contrary to and in violation of its Contracts with Defendants, Exhibits "A" and "B" heretofore mentioned. That Plaintiff herein claims the right to recover from Defendants, as a part of the damages sustained by it and as hereinafter mentioned, all sums paid to the membership of Defendants for isolation pay and the cost of furnishing bus transportation from said date of June 6, 1956, as having been paid under duress, coercion, threat of strike and contrary to and in violation of the Agreements, Exhibits "A" and "B" heretofore mentioned.



## VII.

That by reason of the breach by Defendants of the terms and provisions of said Labor Agreements, Exhibits "A" and "B" hereinbefore mentioned, as hereinbefore alleged or the inducing of such breach by Defendants, as heretofore alleged, and the resulting shut down of the operations of Plaintiff caused solely thereby the Plaintiff has suffered, or will suffer, loss and damages in the sum of \$248,127.00 for which amount the Defendants and each of them are liable to Plaintiff.

Wherefore, Plaintiff prays for judgment herein against the Defendants and each of them for the sum of \$248,127.00, for Plaintiff's costs and disbursements herein to be taxed in the manner provided by law and the rules of this Court, and for such other equitable and legal relief by way of Decree or Judgment herein as may be thought and found proper by the Court.

ALLEN, DeGARMO & LEEDY  
DORSEY & HAIGHT,

By /s/ GERALD DeGARMO,  
Counsel for Plaintiff.

[Endorsed]: Filed November 9, 1956. [46]



[Title of District Court and Cause.]

ANSWER OF DEFENDANTS, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, LOCAL No. 839; JOINT COUNCIL OF TEAMSTERS No. 28; AND WESTERN CONFERENCE OF TEAMSTERS TO AMENDED COMPLAINT

Answering the plaintiff's amended complaint the defendants, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local No. 839, Joint Council of Teamsters No. 28 and Western Conference of Teamsters, admit, deny and allege as follows:

I.

Answering paragraph I these defendants admit that the plaintiff is engaged in an industry affecting commerce within the meaning of the Labor Management Relations Act of 1947, and deny any knowledge or information sufficient to form a belief concerning all the other allegations of said paragraph.

II.

These defendants admit the allegations of the first paragraph of paragraph II.

Answering the second paragraph of paragraph II they admit that Joint Council of Teamsters No. 28 is a voluntary unincorporated association; admit that Local 839 and other local unions chartered by



International Brotherhood of Teamsters within the State of Washington are affiliated with said Joint Council; and deny all the other allegations of said paragraph.

Answering the third paragraph of paragraph II they admit [47] that Western Conference of Teamsters is a voluntary unincorporated association; admit that Joint Council of Teamsters No. 28 and other similar joint councils located within the Western States of the United States are affiliated with said Western Conference, and deny all the other allegations of said paragraph.

These defendants make no answer to the fourth paragraph of said paragraph II relating to International Union of Operating Engineers, Local 37.

Answering the fifth paragraph of paragraph II the defendant Teamsters Local No. 839 admits that it maintains its principle office and has officers or agents engaged in representing it and its members within the Eastern District of Washington. The defendants Joint Council No. 28 and Western Conference deny the allegations of said paragraph as it refers to them or either of them.

### III.

Answering paragraph III of the amended complaint these defendants admit that the plaintiff claims that this is an action brought and being prosecuted pursuant to the provisions of Labor Management Relations Act of 1947, but they deny that plaintiff has a cause of action against the de-



endants, or any of them, by reason of any of the matters alleged in its amended complaint.

#### IV.

Answering paragraph IV these defendants admit that the plaintiff has been performing construction work for the United States Atomic Energy Commission within the Hanford Works Project area and that in connection with that work it employed members of Teamsters Local 839. Defendants admit that said area is in part within the exterior limits of Benton County, Washington, but deny that the said area for the purposes of the labor contracts referred to in the plaintiff's amended complaint is a part of said Benton County, and deny any knowledge or information concerning [48] all the other allegations of said paragraph.

#### V.

Answering paragraph V these defendants admit that on or about December 19, 1955, the Associated General Contractors of America, Inc., Spokane Chapter, negotiated and entered into a labor agreement with the defendants Teamsters Local 839 and other Teamsters local unions, a copy of which is attached to the original complaint as Exhibit "A"; admit that Article VIII, Section 3 of said agreement provides "there shall be no special job agreements"; admit that said agreement became effective on all work covered thereby as of January 1, 1956; they deny that said agreement was submitted to and approved for execution by Joint Council No. 28 or



by Western Conference of Teamsters either as a part of any fixed procedure within the Teamsters Union or at all; admit that after its effective date said agreement has remained in full force and effect; and deny any knowledge or information sufficient to form a belief concerning all the other allegations of said paragraph.

#### VI.

Answering paragraph VI these defendants deny each and every allegation thereof.

#### VII.

Answering paragraph VII of said amended complaint each of these defendants deny that they, or any of them, breached or induced a breach of any of the terms or provisions of the labor agreement identified as Exhibits "A" or "B," and deny that the plaintiff has suffered or will suffer damage in the sum alleged or in any sum whatsoever.

Further answering plaintiff's amended complaint and as an Affirmative Defense these defendants allege:

#### I.

The contract between the plaintiff and the United States [49] Atomic Energy Commission, described in paragraph IV of the plaintiff's amended complaint, related to and is limited to construction work to be performed by plaintiff within an area located within the exterior limits of Benton County, Washington, and the adjoining counties of Franklin, Yakima and Grant, acquired by the Federal Govern-



ment, with the consent of the State of Washington, for purposes of national defense and used by the Federal Government and its agencies for the purposes designated in Atomic Energy Act of 1946. Said area, although in part within the exterior boundaries of Benton County, has always been regarded by labor unions and by contractors as segregated from the remainder of Benton County for the purpose of negotiating labor agreements and was so regarded when the labor agreements described in the plaintiff's original and amended complaints were being negotiated. For many years prior to and during the year 1955 all contractors, contracting with the United States Atomic Energy Commission for the performance of construction work in said area, have negotiated their labor agreements with labor unions, including the defendant Local 839, through their bargaining representative known as Hanford Contractors Negotiating Committee; and all of such contractors, who at the same time were engaged in performing construction work in Benton County and adjoining counties but not within said area, negotiated their labor agreements with labor organizations, including Local 839, through another and different bargaining representative known as Associated General Contractors of America, Inc., Spokane Chapter.

The agreement dated the 19th day of December, 1955, by and between Associated General Contractors of America, Inc., Spokane Chapter, and Teamsters Unions Locals 690, 148, 556, 551 and 839 (at-



tached to plaintiff's original complaint as Exhibit "A") does not apply and was not intended to apply to construction work to be performed by plaintiff for Atomic Energy Commission [50] under the contract described in paragraph IV of the amended complaint.

Wherefore, having fully answered, these defendants pray that the plaintiff's amended complaint be dismissed and that they have judgment for their costs and disbursements herein.

BASSETT, GEISNESS &  
VANCE,

/s/ STEPHEN V. CAREY,

Attorneys for Defendants, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local No. 839; Joint Council of Teamsters No. 28; and Western Conference of Teamsters.

Receipt of Copy acknowledged.

[Endorsed]: Filed December 13, 1956. [51]

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[Title of District Court and Cause.]

ANSWER OF DEFENDANT, INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL No. 370, TO AMENDED COMPLAINT

Comes now defendant, International Union of Operating Engineers, Local No. 370, through its counsel, R. Max Etter, and for answer to plaintiff's



Amended Complaint on file herein, admits, denies and alleges as follows:

I.

Defendant admits that the plaintiff is engaged in an industry affecting commerce within the meaning of the Labor-Management Relations Act of 1947; and denies any knowledge or information sufficient to form a belief concerning all other allegations of said Paragraph I of the plaintiff's amended complaint.

II.

Defendant admits the allegations of the fourth paragraph of Paragraph II of plaintiff's amended complaint.

Answering the first, second and third paragraphs of Paragraph II of plaintiff's amended complaint, this defendant makes no answer to said paragraphs relating as they do to Teamster organizations and defendants named.

Answering the fifth paragraph of Paragraph II of plaintiff's amended complaint, defendant Local No. 370, admits that it [52] maintains its principal office and has officers or agents engaged in representing it and its members within the Eastern District of Washington, and this defendant makes no answer with respect to any allegations relating to other defendants named.

III.

Answering Paragraph III of the amended complaint, this defendant admits that the plaintiff



claims that this is an action brought and being prosecuted pursuant to the provisions of the Labor-Management Relations Act of 1947, but denies that plaintiff has a cause of action against this defendant, Local No. 370, by reason of any of the matters alleged in the amended complaint.

#### IV.

Answering Paragraph IV of the amended complaint, this defendant admits that the plaintiff has been performing construction work for the United States Atomic Energy Commission within the Hanford Works Project Area, and that in connection with that work it employed members of Local No. 370 Operating Engineers. This defendant admits that this area is in part within the exterior limits of Benton County, Washington, but denies that the said area for the purposes of the labor contracts referred to in the plaintiff's amended complaint is a part of said Benton County, and denies any knowledge or information concerning all of the other allegations of said paragraph.

#### V.

Answering Paragraph V of plaintiff's amended complaint, this defendant, Local No. 370, admits that on or about December 24th, 1955, the Associated General Contractors of America, Inc., Spokane Chapter, negotiated and entered into a labor agreement with defendant, Local No. 370, Operating Engineers, a copy of which is attached to plaintiff's original complaint as Exhibit "B"; admits that



Article IX, Section 3 of said agreement provides: "there shall be no special job agreements"; admits that said agreement became [53] effective on all work covered thereby as of January 1st, 1956; this defendant admits that after its effective date said agreement has remained in full force and effect, and denies any knowledge or information sufficient to form a belief concerning all of the other allegations of said paragraph.

#### VI.

This defendant denies each and every allegation of plaintiff's amended complaint as set forth and alleged in Paragraph VI of its amended *plaintiff*.

#### VII.

Answering Paragraph VII of said amended complaint, this defendant denies that it breached, or induced a breach of any of the terms or provisions of the labor agreement identified as Exhibits "A" or "B" and denies that the plaintiff has suffered, or will suffer, damage in the sum alleged, or in any sum whatsoever.

By Way of Further Answer and as an Affirmative Defense, This Defendant Alleges:

#### I.

The contract between the plaintiff and the United States Atomic Energy Commission, described in Paragraph IV of the plaintiff's amended complaint, related to and is limited to construction work to be performed by plaintiff within an area located within the exterior limits of Benton County, Washington,



and the adjoining counties of Franklin, Yakima and Grant, acquired by the Federal Government, with the consent of the State of Washington, for purposes of national defense, and used by the Federal Government and its agencies for the purposes designated in Atomic Energy Act of 1946. Said area, although in part within the exterior boundaries of Benton County, has always been regarded by labor unions and by contractors as segregated from the remainder of Benton County for the purpose of negotiating labor agreements, and was so [54] regarded when the labor agreements described in the plaintiff's original and amended complaints were being negotiated. For many years prior to and during the year 1955, all contractors contracting with the United States Atomic Energy Commission for the performance of construction work in said area, have negotiated their labor agreements with labor unions, including the defendant Local No. 370, through their bargaining representative known as Hanford Contractors Negotiating Committee; and all of such contractors, who at the same time were engaged in performing construction work in Benton County, and adjoining counties, but not within said area, negotiated their labor agreements with labor organizations, including Local No. 370, through another and different bargaining representative known as Associated General Contractors of America, Inc., Spokane Chapter.

The agreement dated the 24th day of December, 1955, by and between Associated General Contrac-



tors of America, Inc., Spokane Chapter, and Local No. 370 Engineers Union (attached to plaintiff's original complaint as Exhibit "B") does not apply, and was not intended to apply, to construction work to be performed by plaintiff for Atomic Energy Commission under the contract described in Paragraph IV of the amended complaint.

Wherefore, having fully answered, this defendant prays that the plaintiff's amended complaint be dismissed, and that it have judgment for its costs and disbursements herein.

/s/ R. MAX ETTER,

Attorney for Defendant, International Union of  
Operating Engineers, Local No. 370.

Affidavit of Mail attached.

[Endorsed]: Filed December 19, 1956. [55]

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[Title of District Court and Cause.]

REPLY OF PLAINTIFF TO ANSWER OF DEFENDANTS, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, LOCAL No. 839; JOINT COUNCIL OF TEAMSTERS No. 28 AND WESTERN CONFERENCE OF TEAMSTERS TO AMENDED COMPLAINT

Comes now Morrison-Knudsen Company, Inc., a corporation, Plaintiff in the above-entitled action,



and for reply to the matter pleaded "By Way of Further Answer and as an Affirmative Defense" in the Answer of Defendants, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local No. 839, Joint Council of Teamsters No. 28 and Western Conference of Teamsters to Amended Complaint herein, admits, denies and alleges as follows:

### I.

Admits that the Contract between the Plaintiff and the United States Atomic Energy Commission described in paragraph IV of the Plaintiff's Amended Complaint related to and is limited to construction work to be performed by Plaintiff within an area located within the exterior limits of Benton County, Washington, and the adjoining counties of Franklin, Yakima and Grant, acquired by the Federal Government for purposes of national defense and used by the Federal Government and its agencies for the purposes [57] designated in the Atomic Energy Act of 1946 and as amended by the Atomic Energy Act of 1954, and denies each and every other allegation in said Further Answer and Affirmative Defenses contained not expressly admitted.

Wherefore, having replied to the affirmative matter as set forth in the Answer of Defendants, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local No. 839, Joint Council of Teamsters No. 28 and Western Conference of Teamsters to the Amended Com-



plaint of the Plaintiff, the Plaintiff, Morrison-Knudsen Company, Inc., a corporation, prays for the entry of Judgment herein in accordance with the prayer of its Amended Complaint.

ALLEN, DeGARMO & LEEDY  
and DORSEY & HAIGHT,

By /s/ GERALD DeGARMO,  
Attorneys of Record for  
Plaintiff.

Receipt of Copy acknowledged.

[Endorsed]: Filed January 11, 1957. [58]

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[Title of District Court and Cause.]

REPLY OF PLAINTIFF TO ANSWER OF DEFENDANT, INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL No. 370, TO AMENDED COMPLAINT

Comes now Morrison-Knudsen Company, Inc., a corporation, Plaintiff in the above-entitled action, and for reply to the matter pleaded "By Way of Further Answer and as an Affirmative Defense" in the Answer of Defendant, International Union of Operating Engineers, Local No. 370 to Amended Complaint herein, admits, denies and alleges as follows:

I.

Admits that the Contract between the Plaintiff and the United States Atomic Energy Commission



described in paragraph IV of the Plaintiff's Amended Complaint related to and is limited to construction work to be performed by Plaintiff within an area located within the exterior limits of Benton County, Washington, and the adjoining Counties of Franklin, Yakima and Grant, acquired by the Federal Government for purposes of national defense and used by the Federal Government and its agencies for the purposes designated in the Atomic Energy Act of 1946 and as amended by the Atomic Energy Act of 1954, and denies each and every other [59] allegation in said Further Answer and Affirmative Defense contained not expressly admitted.

Wherefore, having replied to the affirmative matter as set forth in the Answer of Defendant, International Union of Operating Engineers, Local No. 370, to the Amended Complaint of the Plaintiff the Plaintiff, Morrison-Knudsen Company, Inc., a corporation, prays for the entry of Judgment herein in accordance with the prayer of its Amended Complaint.

ALLEN, DeGARMO & LEEDY  
and DORSEY & HAIGHT,

By /s/ GERALD DeGARMO,  
Attorneys of Record for  
Plaintiff.

Receipt of Copy acknowledged.

[Endorsed]: Filed January 11, 1957. [60]



[Title of District Court and Cause.]

**MOTION FOR MORE DEFINITE STATEMENT**

The defendants move for a more definite statement of the damages alleged in paragraph VII of plaintiff's amended complaint by stating in detail the items of damage claimed to have been sustained by the plaintiff aggregating \$248,127.00.

/s/ R. MAX ETTER,

Attorney for Defendant, International Union of  
Operating Engineers, Local No. 370.

BASSETT, VANCE & DAVIES,

/s/ STEPHEN V. CAREY,

Attorneys for Defendants, International Brother-  
hood of Teamsters, Chauffeurs, Warehousemen  
and Helpers of America, Local No. 839; Joint  
Council of Teamsters No. 28; Western Con-  
ference of Teamsters.

Receipt of Copy acknowledged.

[Endorsed]: Filed January 9, 1957. [61]

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[Title of District Court and Cause.]

**BILL OF PARTICULARS IN RESPONSE TO  
MOTION FOR MORE DEFINITE STATE-  
MENT**

Comes now Morrison-Knudsen Company, Inc., a corporation, Plaintiff in the above-entitled action and in response to the Motion of the Defendants for a more definite statement of the damages as alleged



in paragraph VII of Plaintiff's Amended Complaint submit the following itemization thereof by way of Bill of Particulars:

Summary of Extra Costs Attributable to Strike of  
Operating Engineers and Teamsters at Han-  
ford Works of United States Atomic Energy  
Commission During Period March 22, 1956, to  
June 5, 1956, Inclusive

1. Overhead salaries during strike . . . .	\$ 13,635.26
2. Office rent, furnishings & engineering equipment . . . . .	1,134.73
3. Transportation to protect property during strike . . . . .	1,156.00
4. Director of Labor Relations costs . . .	1,294.00
5. Telephone expense . . . . .	611.99
6. Legal expense . . . . .	10,000.00
7. Re-employment costs after strike . . .	926.26
8. Equipment rentals . . . . .	29,592.59
9. Liquidated damages . . . . .	30,000.00
10. Interest on investment . . . . .	1,821.00
11. Loss of profits . . . . .	72,050.00
12. General administrative expense . . . .	21,615.00
13. Extra strength concrete . . . . .	624.00
14. Wage increase after January 1, 1957	1,869.00
15. Extended time maintaining General Electric Company offices . . . . .	628.31
16. Efficiency loss for labor and supplies	55,280.00
17. Status quo transportation and isola- tion . . . . .	5,888.86
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Total . . . . .	\$248,127.00



ALLEN, DeGARMO & LEEDY  
DORSEY & HAIGHT,

By /s/ GERALD DeGARMO,  
Attorneys of Record for  
Plaintiff.

Receipt of Copy acknowledged.

[Endorsed]: Filed January 17, 1957. [63]

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[Title of District Court and Cause.]

NOTICE OF TRIAL AMENDMENT OF PLEAD-  
INGS AND OF BILL OF PARTICULARS  
CONCERNING DAMAGES

To: International Brotherhood of Teamsters,  
Chauffeurs, Warehousemen and Helpers of  
America, Local No. 839 and to Its Attorneys  
Bassett, Davies & Roberts and Stephen V.  
Carey

And to: International Union of Operating En-  
gineers, Local No. 370 and to R. Max  
Etter, Its Attorney.

You and Each of You are hereby notified and  
informed that the Plaintiff in the above-entitled  
action at the commencement of the trial of the dam-  
ages issues will move the Court for permission to  
amend its damages claim and the Bill of Particu-  
lars, served with respect thereto, as follows:



## I.

The various items of the Bill of Particulars, heretofore served and filed in this cause, will be amended and supplemented as follows:

Item 1—Overtime Salaries During Strike will be amended by increasing the amount thereof from \$13,635.26 to the sum of..... \$13,940.28

The details of the Overhead Salaries During Strike is as follows:

Week ending April 1 .....	\$ 1,456.16
“ “ April 8 .....	1,402.98
“ “ April 15 .....	1,456.16
“ “ April 22 .....	1,386.93
“ “ April 29 .....	1,456.16
“ “ May 6 .....	1,286.54
“ “ May 13 .....	1,233.46
“ “ May 20 .....	1,135.38
“ “ May 27 .....	796.15
“ “ June 3 .....	782.30
Week days of June 4 and 5.....	280.76
	<hr/>
	\$12,672.98
10% Insurance and Taxes .....	1,267.30
	<hr/>
	\$13,940.28

The details of the personnel paid the amounts above during the period indicated is as follows:

F. R. Alexander, Typist .....	\$ 379.52
R. D. Edwards, Instrumentman .....	519.25
R. R. Faust, General Supt. ....	1,569.20
G. J. McMillan, Chief of Party .....	679.64
Ralph Nelson, Office Manager .....	1,439.98
R. E. Reed, Project Manager .....	2,660.04
M. K. Stice, Secretary .....	449.97
E. J. White, Project Engineer .....	1,615.40
L. L. Bean, General Foreman .....	1,200.00



G. F. Bates, Erection Supt. .... 2,159.98

\$12,672.98

10% Insurance and Taxes ..... 1,267.30

\$13,940.28

Item 2—Office Rent, Furnishings and Engineering

Equipment—No change ..... 1,134.73

Item 3—Transportation to Protect Property During

Strike—No change ..... 1,156.00

The detail of the transportation claim is as follows:

R. R. Faust.....	20	trips to Work Areas	85	mi.
L. L. Bean .....	19	“ “ “ “	85	mi.
E. J. White .....	12	“ “ “ “	85	mi.
G. T. Bates .....	20	“ “ “ “	85	mi.
G. J. McMillan .....	21	“ “ “ “	85	mi.
R. E. Reed .....	13	“ “ “ “	85	mi.

105 trips

105 trips at 85 miles = 8,925 miles at 10c.....\$ 892.50

R. E. Reed—trips to Seattle, Spokane and local—2,335 miles at 10c..... 233.50

E. J. White—local travel—300 miles at 10c.... 30.00

Total .....\$1,156.00

Item 4.—Director of Labor Relations Cost—No

change. See details attached as Exhibit “A” ..... 1,294.00

Item 5—Telephone Expense will be amended by in-

creasing the amount thereof from \$611.99 to ..... 625.86

Accordingly the detail of the item as furnished by Bill of Particulars will be amended as follows:

Richland office only—

One-half of March telephone bill.....\$ 97.41

April billing ..... 237.92

May billing ..... 120.62

Three-fourths of June billing ..... 169.91

\$625.86



Item 6—Legal Expense which was shown as estimated in the amount of \$10,000.00 will be amended and decreased to the sum of ..... 750.00

Item 7 — Re-employment Costs After Strike — No change ..... 926.26

The detail of the carpenters, laborers and Teamsters terminated and new hires, together with the process time involved for each is as follows:

Carpenters		
Terminated Due to Strike	Hired to Replace	Process Time
C. Roberts	E. Hughes .....	3
H. Riddle	G. Johnston .....	3
G. Schwartz	C. Swain .....	4
L. Allan	E. Thackman .....	8
R. Brown	S. Thompson .....	8
J. McNew	G. Schwartz .....	4
W. Roy	M. Locke .....	4
K. Scott	M. Martinson .....	4
H. Boswell	R. Fennell .....	4
R. Russelton	D. Williams .....	4
J. Cox	C. Davenport .....	3
E. Carlington	H. Lueke .....	4
R. Hendrix	B. Bailey .....	4
A. Jundt	M. Lashok .....	5
M. Jundt	O. Waymire .....	6
C. Potts	W. Keith .....	6
E. Sartain	D. Jones .....	5½
G. Trebnik	C. Deffenbaugh .....	3
A. Woffinden	C. Pickett .....	4
R. Young	M. Flabber .....	4
G. Ouderkirk	I. Gilstrap .....	8
		<hr/>
		98½

#### Laborers

J. Smithers	W. Reynolds .....	4
G. Taylor	G. Anderson .....	4
J. Edmonson	P. Ortz .....	4
J. Schermer	A. Nauditt .....	11



P. Snyder	V. Rowlette .....	4
L. Waddell	L. Rafferty .....	8
P. Vaughn	W. Waterhouse .....	8

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43

Teamsters

E. McBride	G. Wren .....	5½
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Carpenters, 98½ hrs. at \$2.90 .....	\$285.65
Laborers, 43 hrs. at \$2.27 .....	97.61
Teamsters, 51½ hrs. at \$2.40 .....	13.20

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\$396.46

P/R Tax Insurance, 10% .....	39.65
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\$436.11

Cost to recruit additional supervision:

M. Williams, Carpenters Foreman, reported June 25, cleared for areas June 28, lost time 3/5 of \$161.54 .....	\$ 96.92
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J. Bultman, Carpenter Foreman, reported July 9, ½ day clearing .....	15.00
Medical reject, 7/23-7/27 .....	150.00

T. Hooper, Superintendent, 1 day clearing 1/5 of \$184.62.....	36.92
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\$298.84

P/R Taxes, Insurance, 10% .....	29.88
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328.72

T. Hooper, Superintendent, plane fare, Knoxville, Tenn., to Pasco, Washington .....	161.43
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\$926.26

Item 8—Equipment Rentals—No change .....	29,592.59
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Item 9—Liquidated Damages which were shown upon the original Bill of Particulars in the estimated amount of \$30,000.00 will be amended by eliminating all reference to liquidated damages, inasmuch as extensions of Contract completion time were granted Plaintiff by the Atomic Energy Commission on account of the strike delay, which eliminated any claim for liquidated damages on its part. The element of extra costs due to speed up of work in order to overcome the delay in the production schedule necessitated by the strike is included in and covered by other Items as herein set forth.

Item 10—Interest on Investment will be amended by decreasing the amount thereof from \$1,821.00 to.... 1,804.68

Accordingly the detail of said item as furnished by Bill of Particulars will be amended as follows:

Job Investment—April 30, 1956.....	\$145,987.31
May 31, 1956.....	148,229.90
June 30, 1956.....	152,989.56
June 31, 1956.....	224,987.07

Average investment per month .....	168,048.46
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Job Progress Delay Due to Strike:

Total days behind schedule Oct. 1, 1956.....	128 days
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Less

Days behind schedule March 22, 1956.....	18 days
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Days delay due to Carpenters and Laborers

strike June 6 through June 17, 1956.....	12 days
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Days delay due to Teamsters and Operating

Engineers strike .....	98 days
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98/365 × 4% × \$168,048.46 .....	\$1,804.68
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Item 11—Loss of Profits will be amended by decreasing the amount thereof from \$72,050.00 to..... 64,190.00

Accordingly the detail of said item as furnished by Bill of Particulars will be amended as follows:



Loss of profit due to inability to produce scheduled revenue during period affected by strike of 3/22/56

		Original Scheduled Revenue	Actual Revenue	Net Revenue Short
April .....	30 days	\$240,513.00	.....	\$240,513.00
May .....	31 days	248,805.00	.....	248,805.00
June .....	30 days	213,262.00	\$104,972.00	108,290.00
<hr/>		<hr/>	<hr/>	<hr/>
Total .....	91 days	\$702,380.00	\$104,972.00	\$597,608.00
Average per day.....		7,700.00	1,150.00	6,550.00
Total Loss of Profit = 98 days × \$6,550 at 10% = \$64,190.00				

Item 12—General Administrative Expense will be amended by decreasing the amount thereof from \$21,615.00 to the sum of ..... 19,257.00

Accordingly the detail of said item as furnished by Bill of Particulars will be amended as follows:

98 days delay due to strike × \$6,550.00 the loss of profit per day = \$641,900.00 × 3% charged as administrative expense = \$19,257.00.

Item 13—Extra Strength Concrete will be amended and increased from \$624.00 to the sum of..... 675.75

The detail of this item is as follows:

450½ cu. yds. of concrete at \$1.50 per cu. yd. = \$675.75.

Item 14—Wage Increase After January 1, 1957, will be amended by increasing the amount thereof from \$1,689.40 to the sum of ..... 2,378.55

The details of said amount which at the time of furnishing the Bill of Particulars was based upon estimates, can now be accurately computed from bookkeeping records of Plaintiff, are as follows:

1. Tabulation of Total Craft Hours Worked—See Exhibit sheet immediately following as 7(a).
2. Tabulation of Total Craft Hours Worked on Reimbursed Extra Work at 1957 rates—See Exhibit sheet immediately following as 7(b).
3. Extra Cost Due to Wage Increase After January 1, 1957—See Exhibit sheet immediately following as 7(c).



Item 15—Extended Time Maintaining General Electric Company Offices will be amended by decreasing the amount thereof from \$628.31 to the sum of 547.30

Accordingly the detail of said item as furnished by Bill of Particulars will be amended to read as follows:

Office maintenance during period work extended due to strike—98 days—adjusted for 5 days per week

$98 \times 5/7 = 70$  days each for 100F and 100H Areas—1 hour required per day each Area to service each office

1956—128 hours at \$2.27 .....	\$290.56
1957— 12 hours at \$2.40 .....	28.80
Taxes and insurance—10% .....	31.94
10 gal. oil per day—98 days at 20c gal. ....	196.00
	<hr/>
	\$547.30

Item 16—Efficiency Loss for Labor and Supplies will be amended and increased from \$55,280.00 to the sum of 92,835.29

The details of said amount and which at the time of the service of the original Bill of Particulars were based in part upon estimates are as follows:

(1) Labor

100 H Area

Labor cost to March 31, 1956.....	\$ 30,111.15
1,440 cu. yds. poured .....	20.91 cu. yd.
Labor cost to Sept. 30, 1956.....	111,698.81
Less cost to March 31, 1956.....	30,111.15
	<hr/>
Labor cost 6-6-56 to 9-30-56 .....	\$ 81,587.66
1,772 cu. yds. poured .....	46.04 cu. yd.
Cu. yd. cost prior to March 31, 1956	20.91
	<hr/>
Excess cost of labor per	
cu. yd. after strike .....	25.13
1,772 cu. yds. x excess cost	
of \$25.13 cu. yd =	\$ 44,530.36



100 F Area

Labor cost to March 31, 1956 .....	51,417.85
1,810 cu. yds. poured .....	28.41 cu. yd.
Labor cost to Sept. 30, 1956 .....	140,889.43
Less cost to March 31, 1956 .....	51,417.85
<hr/>	
Labor cost 6/6/56 to 9/30/56 .....	89,471.58
2,253 cu. yds. poured .....	39.71 cu. yd.
Cu. yd. cost prior to strike .....	28.41
<hr/>	
Excess cost of labor per cu. yd. after strike .....	11.30
2,253 cu. yds. x excess cost of \$11.30 cu. yd. =	25,458.90

- (2) Extra concrete forms, hardware and supplies required due to cracking and warping during strike and lack of scheduled number of reuses because of efficiency lag.

100 F

Uniform rental and supplies .....	21,866.53
Lumber, prefabrication forms .....	8,712.14
Scaffolding materials, etc. ....	2,454.53
Misc., small tools, etc. ....	5,417.55
Strip, misc., tools .....	106.26
<hr/>	
Total actual cost .....	\$ 38,557.01
Total actual cost (Fwd.) .....	\$ 38,557.01
Total yardage poured 4,168. cu. yd.	
Estimated cost per cu. yd.....	\$6.14 25,591.52
<hr/>	
Excess cost due to strike .....	\$ 12,965.49

100 H

Uniform rental and supplies .....	17,032.96
Lumber, prefabricated forms .....	9,241.11
Scaffolding material, etc. ....	1,939.40
Misc., small tools, etc. ....	3,835.04
Strip, misc. tools .....	1.87
<hr/>	
Total actual cost .....	32,050.38
Total yardage poured 3,416 cu. yd.	
Estimated cost per cu. yd.....	\$6.49 22,169.84
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Excess cost due to strike .....	9,880.54



## RECAPITULATION

Excess Labor Cost	
100 H Area .....	\$ 44,530.36
100 F Area .....	25,458.90
Excess Material Cost	
100 F Area .....	\$ 12,965.49
100 H Area .....	9,880.54
	<hr/>
	\$ 92,835.29

Item 17—STATUS QUO TRANSPORTATION AND ISOLATION PAY will be amended and increased from \$5,888.86 to the sum of .....\$7,072.64

The details of said amount and the amendment of the Bill of Particulars heretofore served, which was based in part upon estimates, are as follows:

Rent on Pickup—\$80.00 month .....	3.81 day
Gasoline .....	2.28 day
Oil, lubrication, etc. ....	1.26 day
Maintenance .....	1.40 day
	<hr/>
Total per day .....	8.75
3 men rode per trip, man cost .....	2.92 per day

Transportation Furnished via Pickup  
July 11 to Sept. 30, 1956

Operators ..... 91 man days  
Teamsters .....148 man days

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239 man days at 2.92 per day ....\$697.88

	1956	1957
Bus driver 2 hrs. O.T. ....	8.00	8.00
Bus rented .....	13.00	13.00
Gasoline .....	3.80	3.80
Oil, lubrication .....	2.00	2.00
Repair cost .....	6.50	6.50
	<hr/>	<hr/>
	33.30	33.72



## Bus Transportation Furnished

October 1956 ..... 22 days

November ..... 20 days

December ..... 20 days

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62 days at 33.30 ..... 2,064.60

January 1957 ..... 22 days

February ..... 20 days

March ..... 21 days

April ..... 15 days

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78 days at 33.72 ..... 2,630.16

## Isolation Pay

## Teamsters

Halloway .....107 days

Wren ..... 20 days

Still .....191 days

Richardson ..... 86 days

## Operators

Sherrell ..... 83 days

Housman ..... 56 days

Steele ..... 78 days

Grady ..... 19 days

"Status Quo" 640 days at 36.25 .....2,320.00

Less AGC Agreement 640 days at 1.00 ..... 640.00

## Extra cost of Isolation Pay over AGC

Travel Allowances .....1,680.00

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\$7,072.64

## TOTAL AMOUNT OF DAMAGES CLAIM

Item 1—Overtime Salaries During	
Strike .....	\$13,940.28
Item 2—Office Rent, Furnishings &	
Engineering Equipment .....	1,134.73
Item 3—Transportation to Protect	
Property During Strike .....	1,156.00
Item 4—Director of Labor Relations	
Costs .....	1,294.00



Item 5—Telephone Expense .....	625.86
Item 6—Legal Expense .....	750.00
Item 7—Reemployment Costs After Strike .....	926.26
Item 8—Equipment Rentals .....	29,592.59
Item 9—Liquidated Damages .....	None
Item 10—Interest on Investment .....	1,804.68
Item 11—Loss of Profits .....	64,190.00
Item 12—General Administrative Ex- pense .....	19,257.00
Item 13—Extra Strength Concrete .....	675.75
Item 14—Wage Increase After Jan- uary 1, 1957 .....	2,378.55
Item 15—Extended Time Maintain- ing General Electric Com- pany Office .....	547.30
Item 16—Efficiency Loss for Labor and Supplies .....	92,835.29
Item 17—Status Quo Transportation and Isolation .....	7,072.64
	<hr/>
	\$238,180.93

## II.

That in accordance with the foregoing detailed information paragraph VII of the Amended Complaint of the Plaintiff herein will be amended to read as follows:

## VII.

By reason of the breach by Defendants of the terms and provisions of said Labor Agreements, Exhibits "A" and "B" hereinbefore mentioned, as hereinbefore alleged, and the resulting shutdown of the operations of Plaintiff caused solely thereby the [74] Plaintiff has suffered loss and damages in the sum of \$238,180.93 for which amount the Plaintiff prays for Judgment against the Defendants In-



ternational Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local No. 839 and International Union of Operating Engineers, Local No. 370, and each of them.

ALLEN, DeGARMO & LEEDY  
and DORSEY & HAIGHT,

By /s/ GERALD DeGARMO,  
Counsel for Plaintiff. [75]

EXHIBIT A

DIRECTOR OF LABOR RELATIONS  
COSTS APPLICABLE TO STRIKE

April 24, 1956—

Two Round Trip Air Passage Boise-Seattle (Mr. Knack and Tom Medlem) .....	\$137.50
One Round Trip Air Passage Spokane-Seattle (Mr. Sam Guess, Manager AGC) .....	35.86
Meals .....	18.25
Hotel .....	10.34
Taxi .....	10.45

August 30, 1956—

One Round Trip Air Passage Boise-Seattle .....	68.75
Meals .....	4.85
Hotel .....	7.00
Taxi .....	7.75
Telephone calls in connection thereto .....	237.00
Wages or Salary .....	756.23
<hr/>	
Total .....	\$1,294.00







Tabulation of Total Craft Hours Worked

roll—Week Ending	Millwrights Straight Time	Millwrights Over Time	Carpenters Straight Time	Carpenters Over Time	Plumbers Straight Time	Plumbers Over Time	Ironworkers Straight Time	Ironworkers Over Time	Teamsters Straight Time	Teamsters Over Time
1/6/57	523½	43½	147	3	96	51½	3½	96	84	56½
1/13/57	820	44	243	3	160	83	3	200	94	94
1/20/57	836	44	202½	2½	160½	81½	1½	200	94	94
1/27/57	750	30	211	1	160	83	3	200	94	94
2/3/57	689	17	192		160	80		200	94	94
2/10/57	688½	24½	192		160	80		200	94	94
2/17/57	680½	36½	208		160	72		200	94	94
2/24/57	710	110	160		160	82½	2½	200	94	94
3/3/57	710½	118½	124		128	80		200	94	94
3/10/57	580	92	120		120	82	2	200	94	94
3/17/57	450	18	161	1	80½	1½		120	96	96
3/24/57	250	18	134		80			120	51½	51½
3/31/57	266	25	120		80			120	50	50
4/7/57	184½	24½	120		48			120	50	50
4/14/57	96		121½	1½	40	40½	½	120	50	50
4/21/57			120		40	40		96	50	50
4/28/57			80		40	40			42½	42½
5/5/57			48						39	39
	8,234½	645½	2,704	12	1,873	1	1,120	16	2,592	1,331½
	1,009½	146½	876	....	610½	....	226	....	229	45

Extra Work Reimbursed at 1957

ates (See Sheet #2).....

7,225	499	1,828	12	1,262½	1	894	16	2,363	1,286½	211½
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Tabulation of Craft Hours Worked on Reimbursed Extra Work at 1957 Rates

Extra Work	Carpenters	General Finishers	Laborers	Ironworkers	Operating Engineers	Millwrights	Teamsters
H25	56	64	288	16			
F13	8	16	24				
FH15				48		176	
FH23							
F19	9			40			
F20			4	8			
H30	56	8	4	4			
F22		4	4	4			
H45		8	4	12			
H30				24			
H32		24	8				
H46						6	
H44		30	130	51			
Extra on Pump Test							
							146½ O.T. 827½ S.T.

Work for Subcontractors—1957:

Invoice No. 36

37

38

39

Change Order #5—University

Plbg. & Htg.

Office Additions (Contract Work—1957)

473½	69	384	26		45
610½	226	876	229	.....	45
					1,009½ (146½ O.T.)







October 14, 1957

## Item 14—Extra Cost Due to Wage Increase After January 1, 1957

## Summary

Millwrights .....	7,225	Hrs. @	\$0.04	\$ 289.00
	499	Hrs. @	0.02	9.98
	7,225	Hrs. @	0.10	722.50
Laborers .....	1,828	Hrs. @	0.13	237.64
	12	Hrs. @	0.065	.78
Carpenters .....	1,262½	Hrs. @	0.04	50.50
	1	Hr. @	0.02	.02
	1,262½	Hrs. @	0.10	126.25
Finishers .....	894	Hrs. @	0.14	125.16
	16	Hrs. @	0.07	1.12
Ironworkers .....	2,363	Hrs. @	0.18	425.34
Teamsters .....	1,286½	Hrs. @	0.12½	160.81
	211½	Hrs. @	0.06¼	13.22
				<hr/> \$2,162.32
Payroll Taxes and Insurance—10%				216.23
Total				<hr/> <hr/> \$2,378.55

c [Endorsed]: Filed November 5, 1957.

[Title of District Court and Cause.]

STIPULATION AND ORDER RE  
PLACE OF TRIAL, ETC.

Subject to the approval of the Court, it is stipulated that this case shall be transferred for trial from Yakima to Spokane; and



It is further stipulated that this case shall first be assigned for hearing to determine the question of liability only, and if liability is found in favor of the plaintiff it shall be continued and assigned for hearing at a later date for the determination of damages.

ALLEN, DeGARMO & LEEDY  
and DORSEY & HAIGHT,

By /s/ GERALD DeGARMO,  
Attorneys for Plaintiff.

/s/ R. MAX ETTER,  
Attorney for Defendant, International Union of  
Operating Engineers, Local 370.

BASSETT, VANCE & DAVIES,  
/s/ STEPHEN V. CAREY,  
Attorneys for Defendants, International Brother-  
hood of Teamsters, Chauffeurs, Warehousemen  
and Helpers of America, et al.

Approved and so ordered this 16th day of April,  
1957.

/s/ SAM M. DRIVER,  
U. S. District Judge.

[Endorsed]: Filed April 16, 1957. [80]



[Title of District Court and Cause.]

DEFENDANTS' REQUEST FOR ADMISSIONS  
UNDER RULE 36

As provided by Rule 36 of Rules of Civil Procedure, the defendants request that the plaintiff, within twenty (20) days after the service of these requests, make admissions of the truth of the following facts:

(1) That the contract described in paragraph IV of the plaintiff's amended complaint herein between the plaintiff and United States Atomic Energy Commission, dated November 25, 1955, covered construction work to be performed by the plaintiff exclusively within the area now known as "Hanford Atomic Products Operation."

(2) On February 18, 1943, Henry L. Stimson, the then Secretary of War, addressed a letter to the then Attorney General of the United States stating that

"It is necessary and advantageous to the interest of the United States that certain lands situated in Benton County, State of Washington, be acquired for use in connection with the establishment of the Gable Project \* \* \*. The aforementioned lands are to be utilized for the establishment of a military reservation, and for other military uses incident thereto, and the utmost haste in expediting this project is vital to the successful prosecution of the war. It is requested that pursuant to the provisions of the



Act of Congress approved March 27, 1942 (Public Law 507-77th Congress), you procure an order of the court granting immediate possession of the aforesaid lands."

(3) In compliance with the request of the Secretary of [81] War, the Attorney General of the United States, through the United States District Attorney for the Eastern District of Washington, on February 23, 1943, caused a petition for condemnation to be filed in the above-entitled Court, entitled: "No. 128—United States of America, Petitioner vs. Clements P. Alberts, Defendant," which petition described the lands sought to be acquired by the United States for the purposes described by the Secretary of War. Said lands were identified as Area "A" in Benton County, Washington, containing 176,323 acres, more or less, and Area "D" in Benton County, Washington, containing 17,510 acres, more or less.

(4) Upon the filing of the described petition for condemnation the court, on February 23, 1943, entered its order granting the United States of America, the petitioner, the right of immediate possession of the described lands upon a proper showing that the said lands were being acquired in time of war for military, naval, or other war purposes and that immediate possession thereof was required in order that the same might forthwith be occupied, used and improved for the purposes described in the condemnation petition.



(5) On April 12, 1943, the Secretary of War addressed a letter to the Attorney General of the United States referring to the condemnation proceeding then pending and stating, in part:

“It has been administratively determined to be advantageous to the interest of the United States to amend the petition in condemnation and order of possession in order to correctly and fully describe all of the lands to be affected by this proceeding, and to further amend said petition and order to provide for the acquisition of certain existing easements for railroads in the lands involved.

“It is requested, therefore, that you take the necessary action to amend the petition and order of possession to include all of the lands described in the attached Exhibit “A” as Areas ‘A,’ ‘D’ and ‘E’ \* \* \*.”

In that letter the lands to be acquired were described as “Hanford Engineering Works.”

(6) As requested by the Secretary of War, an amended [82] petition for condemnation was filed on April 22, 1943, describing three areas to be acquired and designated as “A,” “D” and “E.” Area “A” containing 182,723 acres, more or less, in Benton County, Washington; Area “D” containing 17,000 acres, more or less, in Benton County, Washington, and Area “E” containing 6,400 acres, more or less, in Benton, Yakima and Grant Counties, Washington, aggregating 206,123 acres, more or less.



(7) Upon the filing of the said amended petition the court, on April 22, 1943, entered its order granting the United States of America the right of immediate possession of the described lands upon a proper showing that the same were being acquired in time of war for military, naval, or other war purposes and that immediate possession was required in order that the same be devoted to the purposes described in the amended petition, namely, for "the establishment of the Hanford Engineering Project, for a military reservation and for other military uses incident thereto." ----

(8) Upon the entry of the said orders of February 23, 1943 and April 22, 1943, the United States, through the War Department, took possession of all of the described lands and thereafter acquired additional lands so that ultimately the area included in excess of 400,000 acres, the greater portion being within the exterior limits of Benton County.

(9) Following the passage of the Atomic Energy Act of 1946, the President, by Executive Order 9816, dated December 31, 1946, transferred all of the lands and property then known as "Manhattan Engineering District, War Department," to the Atomic Energy Commission which at all times since has possessed and operated the same for the production of fissionable material, as provided by the Atomic Energy Act of 1946.

(10) The area designated in the condemnation petitions as "Gable Project" and "Hanford Engi-



neering Works" and designated [83] as "Manhattan Engineering District, War Department" at the time of its transfer to the Atomic Energy Commission is the same area referred to in the plaintiff's amended complaint as "Hanford Atomic Products Operation."

(11) Immediately after the War Department took possession of the lands, as above stated, it entered into a contract with Du Pont De Nemours & Company for the construction and operation of the necessary facilities for the production of fissionable material for war purposes and after the transfer of the area to the Atomic Energy Commission that Commission entered into a contract with General Electric Company for the construction and operation of all facilities for the production of fissionable material for the purposes designated in the Atomic Energy Act of 1946.

(12) The contracts of the Du Pont Company and General Electric Company covered not only the construction and operation of facilities for the manufacture of fissionable materials but also the performance of many related engineering, architectural and research services. Those contracts also included the construction, management and operation of extensive housing and business facilities required to meet the needs of the employees, together with all necessary municipal services. The Federal Government acquired this land by purchase or condemnation and has always used it for the sole purpose of constructing and operating a plant for the



production of fissionable materials. While the Government did not elect to take exclusive jurisdiction of the area, it has controlled all ingress and egress to and from the area and only those with official business and appropriate identification and security clearance have been permitted in the area.

BASSETT, GEISNESS &  
VANCE,

/s/ STEPHEN V. CAREY,  
Attorneys for Defendants, Teamsters, etc., Local No.  
839, Joint Council of Teamsters No. 28 and  
Western Conference of Teamsters.

/s/ R. MAX ETTER,  
Attorney for Defendant, International Union of  
Operating Engineers, Local No. 370.

Receipt of copy acknowledged.

[Endorsed]: Filed December 13, 1956. [84]

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[Title of District Court and Cause.]

ANSWERS OF MORRISON-KNUDSEN COM-  
PANY, INC., A CORPORATION, PLAIN-  
TIF, TO DEFENDANTS' REQUESTS  
FOR ADMISSIONS UNDER RULE 36

Comes now Morrison-Knudsen Company, Inc., a corporation, Plaintiff in the above-entitled action and in response to the Defendants' Requests for Admissions Under Rule 36 served herein on December 12, 1956, admits and states as follows:



(1) As to Request for Admission (1) admits that the Contract described in paragraph IV of the Plaintiff's Amended Complaint herein between the Plaintiff and the United States Atomic Energy Commission dated November 25, 1955, covered construction work to be performed "within the perimeter barricade at Hanford Works," which area is a part or portion of the area now known as "Hanford Atomic Products Operation," and denies all of said request except as expressly covered by the foregoing admission.

(2) As to Request for Admission (2) admits the same.

(3) As to Request for Admission (3) admits the same.

(4) As to Request for Admission (4) admits the same.

(5) As to Request for Admission (5) admits the same. [85]

(6) As to Request for Admission (6) admits the same.

(7) As to Request for Admission (7) admits the same.

(8) As to Request for Admission (8) admits the same.

(9) As to Request for Admission (9) admits that following the passage of the Atomic Energy Act of 1946, the President by Executive Order 9816, dated December 31, 1946, transferred all of the lands and property then known as the "Manhattan En-



gineering District, War Department'' to the Atomic Energy Commission which at all times since has possessed and operated the same for the purposes of and in accordance with the Atomic Energy Act of 1946, as amended by the Atomic Energy Act of 1954 and in part for the production of fissionable material, and denies all of said Request except as expressly covered by the foregoing admissions.

(10) As to Request for Admission (10) admits the same.

(11) As to Request for Admission (11) admits that immediately after the War Department took possession of the lands it entered into a Contract with Du Pont De Nemours & Company for the construction of a plant, the operation of the same, the performance of architect-engineer services, and other work and services all as directed by the United States Government, and pursuant to such Contract and directions certain fissionable materials were produced, which were used for war purposes, and after the transfer of the area to the Atomic Energy Commission it entered into a similar Contract with the General Electric Company for the construction of additional plant, the operation of facilities, the performance of architect-engineer services, and for other work and services all as directed by the Atomic Energy Commission, and pursuant to such Contract and directions certain fissionable materials were produced in accordance with the Atomic Energy Act of 1946 and as amended by the Atomic Energy Act of 1954, and denies all of said Request



except as [86] expressly covered by the foregoing admissions or by the terms and provisions of the Atomic Energy Act of 1946 and the Atomic Energy Act of 1954.

(12) As to Request for Admission (12) and the first sentence thereof incorporates by reference its answer and admissions as contained in (11) above. Admits the truth of the statements as made in the second sentence of Request for Admission (12). As to the third sentence, admits the Federal Government acquired the lands by purchase or condemnation and has always used the same for the purposes and objects set forth or covered by the Atomic Energy Act of 1946 and as amended by the Atomic Energy Act of 1954, including the production of fissionable materials. As to the fourth sentence of Request for Admission (12) states that although the United States has refused to accept either exclusive or concurrent jurisdiction over the area now known as "Hanford Atomic Products Operation" it has to the extent deemed necessary or advisable by the Atomic Energy Commission controlled ingress to and egress from certain portions of said area through the requirements of security clearance passes or permits, which requirements have been changed or altered from time to time as deemed appropriate by the Atomic Energy Commission. Other than as expressly covered by the foregoing admissions, the Request for Admission (12) and each part thereof is denied as untrue.



Wherefore, Morrison-Knudsen Company, Inc., a corporation, Plaintiff herein, verifies the foregoing admissions as true. R. B. Snow, its Assistant Secretary.

MORRISON-KNUDSEN  
COMPANY, INC.,

By /s/ R. B. SNOW,  
Assistant Secretary.

Subscribed and Sworn To by R. B. Snow on behalf of Morrison-Knudsen Company, Inc., Plaintiff herein, this 28th day of December, 1956.

[Seal]: /s/ GERALD DeGARMO,  
Notary Public in and for the State of Washington,  
Residing at Seattle.

Receipt of copy acknowledged.

[Endorsed]: Filed December 31, 1956. [87]

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[Title of District Court and Cause.]

DEFENDANTS' SUPPLEMENTAL REQUEST  
FOR ADMISSIONS UNDER RULE 36

As provided by Rule 36 of Rules of Civil Procedure, the defendants request that the plaintiff, within ten days after the service of these supplemental requests, make admissions of the truth of the following facts:

Supplemental Request 1. From time to time from February 23, 1943, as the United States ac-



quired lands in Benton County and adjoining counties for use as the "Hanford Atomic Projects Operation" all the lands and facilities constituting that Project have been immune from taxation by the State of Washington and its political subdivisions, including the County of Benton.

Supplemental Request 2. As authorized by Section 9(b) of the Atomic Energy Act of 1946, As Amended (42 USCA Section 1809(b)) the Atomic Energy Commission, beginning with the school year ending June 30, 1948, has made substantial contributions in lieu of taxes to Benton County for the maintenance of its schools, but it has never made any contributions in lieu of taxes to the State of Washington or to any of its political subdivisions for governmental purposes generally.

BASSETT, VANCE & DAVIES,

/s/ STEPHEN V. CAREY,

Attorneys for Defendants, Teamsters etc., Local No. 839, Joint Council of Teamsters No. 28 and Western Conference of Teamsters.

/s/ R. MAX ETTER,

Attorney for Defendant, International Union of Operating Engineers, Local No. 370.

Receipt of copy acknowledged.

[Endorsed]: Filed June 3, 1957. [88]



[Title of District Court and Cause.]

ANSWERS OF PLAINTIFF TO DEFENDANTS' SUPPLEMENTAL REQUEST FOR ADMISSIONS UNDER RULE 36

Comes now Morrison-Knudsen Company, Inc., a corporation, Plaintiff in the above-entitled action, and for Answer to the Defendants' Supplemental Request for Admissions Under Rule 36 states:

Answer to Supplemental Request No. 1. Admits that as to such properties constituting "Hanford Atomic Projects Operation" as to which the United States of America acquired fee title, and as to such facilities located thereon as to which ownership is in the United States of America none of the State of Washington, or its various political subdivisions, including Benton County, has the power of taxation thereof.

Answer to Supplemental Request No. 2. Denies that any contributions have ever been made "in lieu of taxes" to Benton County for the maintenance of its schools pursuant to Section 9(b) of the Atomic Energy Act of 1946 as Amended (42 USCA Section 1809(b)) and admits that the Atomic Energy Commission has never made any contributions "in lieu of taxes" to the State of [89] Washington or to any of its political subdivisions for governmental purposes.

Plaintiff does state and admit, however, that the Atomic Energy Commission pursuant to the author-



ity given by Section 12a(5) of the Atomic Energy Act of 1946 and the similar provision Section 161e of the Atomic Energy Act of 1954 (42 USCA Section 2201(e)) reading as follows:

“Sec. 161 General Provisions. In the performance of its functions the Commission is authorized to \* \* \*

“e. acquire such material, property, equipment, and facilities, establish or construct such buildings and facilities, and modify such buildings and facilities from time to time, as it may deem necessary, and construct, acquire, provide, or arrange for such facilities and services (at project sites where such facilities and services are not available) for the housing, health, safety, welfare, and recreation of personnel employed by the Commission as it may deem necessary, subject to the provisions of Section 174;”

and Contracts made in accordance therewith with School District 400 serving Richland Community, Washington, has made substantial payments to said District each year since 1946.

Wherefore, Morrison-Knudsen Company, Inc., a corporation, Plaintiff herein, verifies the foregoing Admissions as true by R. B. Snow, its Assistant Secretary.

MORRISON-KNUDSEN  
COMPANY, INC.

By /s/ R. B. SNOW,  
Assistant Secretary.



Subscribed and sworn to by R. B. Snow on behalf of Morrison-Knudsen Company, Inc., Plaintiff herein, this 29th day of May, 1957.

[Seal]     /s/ VIRGINIA COLEMAN,  
Notary Public in and for the State of Washington,  
Residing at Seattle.

Receipt of copy acknowledged.

[Endorsed]: Filed June 10, 1957. [90]

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[Title of District Court and Cause.]

PLAINTIFF'S REQUEST FOR  
ADMISSIONS UNDER RULE 36

As provided by Rule 36 of the Rules of Civil Procedure, the Plaintiff requests that the Defendants, within twenty (20) days after the service of these Requests, make admissions of the truth of the following facts:

(1) That under date of May 26, 1943, there was sent by Henry L. Stimson, Secretary of War, to Honorable Arthur B. Langlie, Governor of Washington, a communication, a copy of which is attached hereto as Exhibit "A," which was received by the Executive Department of the State of Washington June 1, 1943, and a copy of which was signed by the said Arthur B. Langlie as Governor of the State of Washington on June 2, 1943, and returned to the War Department.



(2) That under date of November 8, 1943, there was sent by Henry L. Stimson, Secretary of War, to Honorable Arthur B. Langlie, Governor of Washington, a communication, a copy of which is attached hereto as Exhibit "B," which was received by the Executive Department of the State of Washington November 8, [91] 1943.

(3) That under date of January 4, 1944, there was sent by Henry L. Stimson, Secretary of War, to Honorable Arthur B. Langlie, Governor of Washington, a communication, a copy of which is attached hereto as Exhibit "C," which was received by the Executive Department of the State of Washington and one copy signed by the Governor of the State of Washington on January 10, 1944, and returned to the War Department.

(4) That under date of August 16, 1944, there was sent by the Acting Secretary of War for the United States to Honorable Arthur B. Langlie, Governor of Washington, a communication, a copy of which is attached hereto as Exhibit "D," which was received by the Executive Department of the State of Washington August 22, 1944, and one copy of which was signed by the Governor of the State of Washington on August 22, 1944, and returned to the War Department.

(5) That under date of January 31, 1945, there was sent by Henry L. Stimson, Secretary of War, to Honorable Mon C. Wallgren, Governor of Washington, a communication, a copy of which is attached



hereto as Exhibit "E," which was received by the Executive Department of the State of Washington August 6, 1945, and one copy of which was signed by the Governor of the State of Washington on August 9, 1945, and returned to the War Department.

(6) That at all times since acquisition by the United States Government, the entire area located in the State of Washington known as Hanford Atomic Products Operations has been subject to the criminal code of the State of Washington and the enforcement of all law and order in the area has been under the jurisdiction and control of the duly elected sheriffs of the various counties of the State of Washington in which said area is located. [92]

(7) That at all times since acquisition by the United States Government all construction activities within the area now known as Hanford Atomic Products Operation and all labor employed within said area have been subject to the jurisdiction and supervision of the Department of Labor of the State of Washington and the safety regulations of said Department have been applied to all work and labor in said area and supervised by representatives of the State of Washington, Department of Labor.

(8) That at all times since acquisition by the United States Government all labor employed within the area now known as Hanford Atomic Products Operations has been considered to be subject to the terms and provisions and covered by the



provisions of the State of Washington Workmen's Compensation Act.

(9) That under date of December 29, 1955, there was sent by Kenneth McCaffree, Executive Secretary of the Hanford Contractors Negotiating Committee, to the Pasco-Kennewick Building & Construction Trades Council and to each of the Defendants, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local No. 839, and International Union of Operating Engineers, Local No. 370, a communication, a copy of which is attached hereto as Exhibit "F."

(10) That at no time since December 31, 1955, has there been in force or effect a Construction Collective Bargaining Agreement covering Hanford Works or the area known as Hanford Atomic Products Operations between the Hanford Contractors Negotiating Committee and any of Defendants to this action.

(11) That at no time has Morrison-Knudsen Company, Inc. ever signed or approved in writing any agreement negotiated between any of Defendants and the Hanford Contractors Negotiating Committee.

(12) That at all times mentioned in the Amended Complaint the Plaintiff, Morrison-Knudsen Company, Inc., was and [93] it now is a corporation organized under the laws of the State of Delaware with its principal office and place of



business at Boise, Idaho, and qualified as a foreign corporation under the laws of the State of Washington.

(13) That at no time since January 1, 1956, has there been in force and effect any Agreement providing for the payment of by Plaintiff, or by the terms of which Plaintiff was obligated to make or pay, contributions toward the Health and Welfare Fund of any of Defendants International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local No. 839, Joint Council of Teamsters No. 28 or Western Conference of Teamsters other than the Agreement which was attached to the original Complaint of Plaintiff herein as Exhibit A.

(14) That at no time since January 1, 1956, has there been in force and effect any Agreement providing for the payment of by Plaintiff, or by the terms of which Plaintiff was obligated to make or pay, contributions toward the Health and Welfare Fund of the Defendant International Union of Operating Engineers, Local No. 370, other than the Agreement which was attached to the original Complaint of the Plaintiff herein as Exhibit B.

(15) That on the 14th day of November, 1956, there was left with Ralph Nelson, Project Office Manager of Plaintiff at Richland, Washington, by one Dan Griffith, a representative of the Defendant International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local No. 839, copies of the Agreement, of which



Exhibit G hereto is a photostatic copy and copies of the Compliance Agreement, of which Exhibit H hereto is a photostatic copy, with the request that said Agreement and Compliance Agreement be delivered to the University Plumbing & Heating Company, a Subcontractor of Plaintiff upon its Contract with the Atomic Energy Commission for work upon and within the Hanford Atomic Products Operation area, and which Agreement and [94] Compliance Agreement were stated to cover the Subcontract work of the University Plumbing & Heating Company within the Hanford Atomic Products Operation area under its Subcontract with Plaintiff.

ALLEN, DeGARMO & LEEDY  
and DORSEY & HAIGHT,

By /s/ GERALD DeGARMO,  
Attorneys for Plaintiff. [95]

EXHIBIT A

War Department  
Washington

May 26, 1943.

Honorable Arthur B. Langlie,  
Governor of Washington,  
Olympia, Washington.

Dear Governor Langlie:

The laws of the State of Washington [An act of the legislature of Washington approved March 15,



1939 (Session Laws 1939, chap. 126, p. 357; see also sec. 8108-1 to 8108-4, inclusive, Remington's Revised Statutes of Washington, annotated, 1931 [1940 Pocket Supplement])), permit the assumption of concurrent Federal jurisdiction over lands within that State title of record to which has been acquired by the United States for military and certain other purposes.

Under section 355, Revised Statutes, as amended by the act of February 1, 1940 (54 Stat. 19), and by the act of October 9, 1940 (54 Stat. 1083; 40 U.S.C. 255), it is provided in effect that unless and until the United States has accepted jurisdiction over lands acquired or in which any interest shall have been acquired after February 1, 1940, it shall be conclusively presumed that no such jurisdiction has been accepted.

Accordingly, notice is hereby given that the United States accepts concurrent jurisdiction over all lands title of record to which has been acquired by it for military purposes within the State of Washington and over which concurrent jurisdiction has not heretofore been obtained.

It is requested that you return the inclosed copy of this letter, with an indorsement thereon over your signature stating the date of your receipt of this notice.

Sincerely yours,

/s/ HENRY L. STIMSON,  
Secretary of War.



11/15/43.

The Hanford Engineer Works is excepted from this notice. See War Dept. letter of Nov. 8, 1943.

/s/ W. B. GIBSON.

One copy signed by the Governor on June 2, 1943 and returned to the War Dept. [96]

## EXHIBIT B

War Department  
Washington

Nov. 8, 1943.

Honorable Arthur B. Langlie,  
Governor of Washington,  
Olympia, Washington.

Dear Governor Langlie:

Under date of May 26, 1943, the United States accepted concurrent jurisdiction over all lands acquired within that state for military purposes, title to which had vested and over which concurrent jurisdiction had not previously been obtained.

The records of this Department indicate that title to a portion of the Hanford Engineer Works had vested in the United States prior to the above acceptance, and that jurisdiction was thus established over such area.

The War Department does not desire to exercise concurrent jurisdiction over this reservation, but



prefers that it remain under the jurisdiction of the State of Washington. It is therefore requested that your records be changed to specifically except the Hanford Engineer Works from the above acceptance, and that all interested state officials be notified to the effect that the portion of this reservation covered by the letter of May 26, 1943, should be restored to the jurisdiction of the State of Washington.

Sincerely yours,

/s/ HENRY L. STIMSON,  
Secretary of War. [97]

### EXHIBIT C

War Department  
Washington

Jan. 4, 1944.

Honorable Arthur B. Langlie,  
Governor of Washington,  
Olympia, Washington.

Dear Governor Langlie:

The laws of the State of Washington [An act of the legislature of Washington approved March 15, 1939 (Session Laws 1939, chap. 126, p. 357; see also sec. 8108-1 to 8108-4, inclusive, Remington's Revised Statutes of Washington, Annotated, 1931 [1940 Pocket Supplement])] permit the assumption of concurrent Federal jurisdiction over lands within that State title of record to which has been



acquired by the United States for military and certain other purposes.

Under section 355, Revised Statutes, as amended by the act of February 1, 1940 (54 Stat. 19), and by the act of October 9, 1940 (54 Stat. 1083; 40 U.S.C. 255), it is provided in effect that unless and until the United States has accepted jurisdiction over lands acquired or in which any interest shall have been acquired after February 1, 1940, it shall be conclusively presumed that no such jurisdiction has been accepted.

Accordingly, notice is hereby given that the United States accepts concurrent jurisdiction over all lands title of record to which has been acquired by it for military purposes within the State of Washington since February 1, 1940, and over which Federal jurisdiction has not heretofore been obtained, excepting, however, from this acceptance all lands comprising the Hanford Engineer Works, which is located in the Counties of Benton, Grant, Franklin and Yakima.

Return of the duplicate copy of this letter with your indorsement thereon designating time of receipt of this acceptance by your office, would be appreciated.

Sincerely yours,

HENRY L. STIMSON,  
Secretary of War.

One copy signed by the Governor on Jan. 10, 1944 and returned to the War Dept. [98]



## EXHIBIT D

War Department  
Washington

Aug. 16, 1944.

Honorable Arthur B. Langlie,  
Governor of Washington,  
Olympia, Washington.

Dear Governor Langlie:

The laws of the State of Washington (an act of the legislature of Washington approved March 15, 1939 (Session Laws 1939, chap. 126, p. 357); see also secs. 8108-1 to 8108-4, inclusive, Remington's Revised Statutes of Washington, Annotated, 1931 (1940 Pocket Supplement) permit the assumption of concurrent Federal jurisdiction over lands within that State title of record to which has been acquired by the United States for military and certain other purposes.

Under section 355, Revised Statutes, as amended by the act of February 1, 1940 (54 Stat. 19), and by the act of October 9, 1940 (54 Stat. 1083; 40 U.S.C. 255), it is provided in effect that unless and until the United States has accepted jurisdiction over lands acquired or in which any interest shall have been acquired after February 1, 1940, it shall be conclusively presumed that no such jurisdiction has been accepted.

Accordingly, notice is hereby given that the United States accepts concurrent jurisdiction over all lands title of record to which has been acquired



by it for military purposes within the State of Washington and over which Federal jurisdiction has not heretofore been obtained, excepting, however, from this acceptance all lands comprising the Hanford Engineer Works, which is located in the Counties of Benton, Grant, Franklin and Yakima.

Return of the duplicate copy of this letter, with your indorsement thereon designating time of receipt of this acceptance by your office, would be appreciated.

Sincerely yours,

/s/ [Indistinguishable]

Acting Secretary of War.

One copy signed by the Governor on Aug. 22, 1944 and returned to the War Dept. [99]

### EXHIBIT E

One Copy Signed by the Governor on Aug. 9, 1945  
and Returned to the War Dept.

War Department  
Washington, D. C.

July 31, 1945.

Honorable Mon C. Wallgren,  
Governor of Washington,  
Olympia, Washington.

Dear Governor Wallgren:

The laws of the State of Washington (an act of the legislature of Washington approved March 15, 1939 (Session Laws 1939, chap. 126, p. 357); see



also secs. 8108-1 to 8108-4, inclusive, Remington's Revised Statutes of Washington, Annotated, 1931 (1940 Pocket Supplement)) permit the assumption of concurrent Federal jurisdiction over lands within that State title of record to which has been acquired by the United States for military and certain other purposes.

Under Section 355, Revised Statutes, as amended by the act of February 1, 1940 (54 Stat. 19), and by the act of October 9, 1940 (54 Stat. 1083; 40 U.S.C. 255), it is provided in effect that unless and until the United States has accepted jurisdiction over lands acquired or in which any interest shall have been acquired after February 1, 1940, it shall be conclusively presumed that no such jurisdiction has been accepted.

Accordingly, notice is hereby given that the United States accepts concurrent jurisdiction over all lands title of record to which has been acquired by it for military purposes within the State of Washington and over which Federal jurisdiction has not heretofore been obtained, excepting, however, from this acceptance all lands comprising the Hanford Engineer Works, which is located in the Counties of Benton, Grant, Franklin and Yakima.

Return of the duplicate copy of this letter with your indorsement designating time of receipt of this acceptance by your office, would be appreciated.

Sincerely yours,

/s/ HENRY L. STIMSON,  
Secretary of War.



EXHIBIT F

December 29, 1955.

International Union of Operating Engineers

Local Union No. 370

310 West Clark

Pasco, Washington,

and

Pasco-Kennewick Building and Construction

Trades Council

204 West Clark

Pasco, Washington,

and

Other Local Unions Signatory to the Construction Collective Bargaining Agreement, Hanford Works, listed below.

Gentlemen:

The Hanford Contractors Negotiating Committee, on behalf of those contractors signatory to the Construction Collective Bargaining Agreement, Hanford Works, and in accordance with its letter of October 28, 1955, is exercising the right to terminate the agreement and is hereby terminating said agreement on December 31, 1955.

The Hanford contractors will not stop work on the Project as of January 1, 1956. The contractors will maintain wages and conditions in effect on December 31, 1955, until a new agreement or agree-



ments between the contractors and the unions involved can be completed. The contractors however are not proposing, nor do they intend, that any particular condition, in effect between December 31, 1955, and the time a new agreement or agreements are negotiated with the respective unions, will necessarily be a part of the new agreement or agreements.

The wage policy of the Project will remain unchanged. In accordance with past practice the Committee is willing to accept those wage scales and effective dates which currently have been negotiated by a particular craft or crafts and the association with which those unions normally negotiate, and which are prevailing in the area surrounding the Project. These wages can be placed into effect as soon as agreements are completed between the Hanford contractors and the respective union or unions.

The Hanford contractors are willing to meet, as agreed to by Mr. W. G. Shirk of the Building Trades Council, at 10:00 a.m., on Thursday, January 5, 1956, in the conference room of Building 770-B, Richland, to complete negotiation.

Very truly yours,

KENNETH M. McCaffree,  
Executive Secretary.

KMM:fp

Bricklayers, Local Union No. 7  
Carpenters, Local Union No. 1849



Cement Finishers, Local Union No. 478

Iron Workers, Local Union No. 14

Laborers, Local Union No. 348

Millwrights, Local Union No. 1699

Painters, Local Union No. 427

Painters (Sign), Local Union No. 1777

Roofers, Local Union No. 231

Sheet Metal Workers, Local Union No. 242

Teamsters, Local Union No. 839 [101]

## EXHIBIT G

Trustees' Copy.

Eastern Washington and Northern Idaho  
Teamster Construction Industry Welfare Plan

### Agreement

This Agreement, entered into this 14th day of November, 1956, between University Plumbing & Heating hereinafter referred to as the "employer," and Local Union No. .... of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, hereinafter referred to as the "union,"

Witnesseth:

Whereas, the parties have entered a Labor Agreement covering certain employees of the employer; and



Whereas, the parties hereto desire to enter into a mutual welfare agreement for the benefit of the employees of the employer, now, therefore,

It Is Mutually Agreed as Follows:

### I.

The employer shall pay into a fund established for the purpose of administration of certain welfare benefits and known as the Eastern Washington and Northern Idaho Teamster Construction Industry Welfare Plan the sum of 71½ cents for all compensable hours worked by any employee covered by the terms of the Labor Agreement, said payments to become effective on the first day of December, 1956, and to be made thereafter by the tenth day of each succeeding month during the term of the agreement.

### II.

The employer hereby grants authority to act in his behalf to G. B. Seebeck, James Crick, Sr., and Frank M. Heathe, as Trustees, or their successors in office, to administer said fund as the representatives of the employer and full authority to act for the employer as the employers' representatives in the administration of said fund.

### III.

Failure to make all payments herein provided for, within the time herein specified, shall be a breach of the Labor Agreement.



In Witness Whereof, the parties have hereunto set their hands and seals the day and date first above-written.

Employer: University Plumbing

Local Union No. 839

By..... By.....

Payment for the plan becomes effective December 1st, 1956, for all hours worked by teamster personnel during previous month of November, 1956.

Approximate Number of Covered Employees: 1.

Address of Employer: 3941 University Way, Seattle  
5, Wash. [102]

Have Three Copies Signed

## EXHIBIT H

### Heavy and Building Construction Compliance Agreement

14th day of November, 1956.

I hereby approve, adopt and acknowledge responsibility for my adherence to the attached Agreement dated January 1, 195., between the Spokane Chapter of the Associated General Contractors of America, Inc., and Teamsters Local Unions Nos. 690, 551,



148, 556, and 839, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, covering all construction in the following territorial jurisdiction: Ferry, Stevens, Pend Oreille, Grant, Lincoln, Spokane, Adams, Whitman, Benton, Franklin, Walla Walla, Garfield, Asotin, Columbia and that portion of Okanogan, Douglas and Yakima counties lying east of the 120th meridian in the State of Washington; and Boundary, Bonner, Kootenai, Benewah, Shoshone, Latah, Nez Perce, Lewis, Clearwater and the north half of Idaho County in the State of Idaho, and shall remain in full force and effect until December 31, 195., except at modified or amended in accordance with the provisions of Article II of the Agreement.

I agree to operate all building, heavy, highway and engineering projects in the above-listed counties in the State of Washington and the State of Idaho under the terms of the Agreement, with the exception, that all disputes that may arise under such operations will be settled by the following procedure, rather than the procedure set out in Article XI of the Agreement.

#### Settlement of Disputes

In the event a dispute as to the proper interpretation of this Agreement or to any condition of employment not specifically covered therein cannot be satisfactorily settled on the job site, the same shall be referred to a Board of Conciliation consisting of



one person appointed by each party; the two so appointed to select a third member. This Board shall meet as soon as possible but in any event not later than seven (7) days after the dispute has been referred to them. It may also provide retroactivity not exceeding sixty (60) days and shall state the effective date. Decision by this Board shall be rendered within (20) days after the dispute is referred to them, and such decision shall be final and binding upon both parties. Pending decision of any such dispute, work shall not be suspended, it being understood and agreed that neither strikes nor lockouts shall take place during the life of this Agreement.

UNIVERSITY PLUMBING &  
HEATING.

Name of the Company.

3941 University Way,

Seattle 5, Wash.

Teamsters Local Unions Nos. 690, 551, 148, 556 and 839, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America.

.....

.....

Signed for the Company.

.....

Witness.

[Endorsed]: Filed January 17, 1957. [103]



[Title of District Court and Cause.]

DEFENDANTS' ANSWERS TO PLAINTIFF'S  
REQUESTS FOR ADMISSIONS UNDER  
RULE 36

The defendants answer plaintiff's requests for admissions under Rule 36 as follows:

Request 1—Admitted

Request 2—Admitted

Request 3—Admitted

Request 4—Admitted

Request 5—Admitted

Request 6—The defendants do not admit Request 6 as stated. They do admit that since operations first began in the Hanford area acts committed therein which constituted violations of Federal laws and regulations were prosecuted by Federal authorities, and acts committed therein which constituted violations of the Criminal Code of the State of Washington were prosecuted by local authorities, but, for reasons peculiar to that area, local police officers were not allowed to function within the area and persons sought to be prosecuted for violations of State law were apprehended within the area by area officials and surrendered to local authorities at the entrance to the area. [104]

Request 7—The defendants do not admit Request 7 as stated. They do admit that construction work within the Hanford area was carried on by con-



tractors in conformity with the safety regulations of the Department of Labor of the State of Washington, but special administrative procedures were adopted applicable to that area only.

Request 8—The defendants do not admit Request 8 as stated. They do admit that by special arrangements between state authorities, Federal authorities and contractors doing work within the area compensation to injured workmen and their dependents was made in conformity with the terms and provisions of the Workmen's Compensation Act of the State of Washington, but defendants state that the Compensation Act was administered within that area by special administrative procedures applicable to that area and not applicable to the State generally.

Request 9—Admitted

Request 10—Admitted, subject, however, to the qualification that between December 31, 1955 and the date of the work stoppage, referred to in the plaintiff's amended complaint, negotiations were being carried on between a committee representing interested labor unions and Hanford Contractors Negotiating Committee for a new contract covering construction work to be performed exclusively within the Hanford area.

Request 11—Defendants state that while Morrison-Knudsen Company, Inc., may not "in writing" have signed or approved any agreement negotiated between any of the defendants and Hanford Contractors Negotiating Committee, Morrison-Knudsen



did actually perform work within the area subject to the terms and conditions of contracts negotiated on behalf of the defendant unions with Hanford Contractors Negotiating Committee representing contractors, including Morrison-Knudsen.

Request 12—Admitted. [105]

Request 13—Answering Request 13 defendants International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local 839; Joint Council of Teamsters No. 28 and Western Conference of Teamsters admit that the contract in force prior to January 1, 1956, and applicable to the Hanford area, was cancelled as of December 31, 1955, by notice given by Hanford Contractors Negotiating Committee through Kenneth M. McCaffree, its executive secretary, and that no substitute contract became effective relative to said area between January 1, 1956, and the date of the work stoppage, referred to in plaintiff's amended complaint, and these defendants deny that the contract attached to plaintiff's amended complaint as Exhibit "A" had or has any application to work to be performed within the Hanford area.

Request 14—See answer to Request 13.

Request 15—Defendant International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local 839, admits that on November 14, 1956 (five months after work had been resumed following the work stoppage described in plaintiff's amended complaint), Dan Griffin was con-



nected with that defendant in the capacity of business agent, and on that date he left with Ralph Nelson the two documents, photostatic copies of which are identified in said request as Exhibits "G" and "H," with request that said documents be delivered to University Plumbing & Heating Co.

/s/ R. MAX ETTER,

Attorney for International Union of Operating Engineers, Local No. 370.

BASSETT, VANCE & DAVIES,

/s/ STEPHEN V. CAREY,

Attorneys for International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local No. 839, et al.

Duly verified.

Receipt of copy acknowledged.

[Endorsed]: Filed April 10, 1957. [106]

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[Title of District Court and Cause.]

## PLAINTIFF'S SUPPLEMENTAL REQUESTS FOR ADMISSIONS UNDER RULE 36

As provided by Rule 36 of the Rules of Civil Procedure the Plaintiff requests that the Defendants, within ten (10) days after service of these Supplemental Requests, make admissions of the truth of the following facts:



Supplemental Request for Admission No. 1. That pursuant to the provisions of Chapter 144, Laws of 1951 of the State of Washington, there was entered into between the United States of America, represented by the Atomic Energy Commission, and the Department of Labor and Industries of the State of Washington a Contract No. AT(45-1)562, of which Exhibit "A" hereto is a full, true and correct copy, including Appendix A.

Supplemental Request for Admission No. 2. That pursuant to the provisions of Sections SC-4(a) and GC-17 of the Specifications, a part of the Construction Contract dated November 25, 1955, between the United States Atomic Energy Commission and Morrison-Knudsen Company, Inc., for the "Construction of Pumping Plant Additions, 100-F and 100-H Areas; and [108] Office Additions and Modification of Vent Rooms, 100-B, 100-D and 100-F Areas at Hanford Works, Richland, Washington," as referred to in paragraph IV of the Plaintiff's Amended Complaint herein and which Specifications SC-4(a) and GC-17 read as follows:

"SC-4. Government Furnished Property, Facilities and Services

"The Commission will furnish to the Contractor, and except as otherwise specified, at no charge to the Contractor, the following equipment, materials, facilities and services, for incorporation in the work and/or use in performance of the work.

"a. Industrial Insurance and Medical Aid Industrial insurance and medical aid, in accordance



with the Industrial Insurance Law and Medical Aid Act of the State of Washington, and covering operations at the site of the Hanford Works, will be afforded at no cost to the Contractor and his subcontractors as set forth in paragraph GC-17, subparagraph b, of the General Conditions. (Liability insurance shall be maintained by the Contractor, at his own expense, in accordance with subparagraph c of paragraph GC-17 of the General Conditions. Subparagraph a of paragraph GC-17 of the General Conditions is not applicable and shall be disregarded.)”

“GC-17. Insurance

“Insurance protection covering operations at the site of Hanford Works will be afforded or required of the Contractor and his subcontractors to the extent provided by Paragraph SC-4, a, of the Special Conditions, under one of the following:

“a. The Contractor before commencing the work shall be qualified under the Workmen’s Compensation Laws of the State in which the work is to be done and shall at all times comply with the provisions of said laws and shall maintain such Workmen’s Compensation or Employer’s Liability Insurance as will protect the Contractor and the Commission from any and all risks and from any and all claims under such Workmen’s Compensation Laws.

“b. The Commission will afford Industrial Insurance and Medical Aid. In accordance with the



Industrial Insurance Law and Medical Aid Act of the State of Washington, and covering all of the Contractor's employees who are engaged in work contemplated by this contract, the coverage under this paragraph extends to any claim cognizable under the Industrial Insurance Law and Medical Aid Act of the State of Washington, notwithstanding the fact that the claim may be filed in a jurisdiction other than the State of Washington. In the event a claim is filed in a jurisdiction other than the State of Washington, the Commission will [109] reimburse to the Contractor the amount required to be paid by the Contractor to satisfy the award made in such foreign jurisdiction.

“(1) In order for the Commission to properly administer the insurance afforded by this subparagraph, the Contractor agrees to:

“(a) Furnish the Commission with such payroll records as are required under the Industrial Insurance Law and Medical Aid Act of the State of Washington, and

“(b) As soon as practicable furnish the Commission for administration of the insurance coverage provided hereunder and for transmission to the State of Washington, Department of Labor and Industries, accident reports, on Department approved Forms with respect to all claims concerning accidental injury or occupational diseases alleged to have occurred in the course of the work of the



Contractor under this contract. Such report shall be accomplished by written statements by or on behalf of the claimant's supervisor. The Contractor shall, at the Commission's request, furnish such other related papers or documents as may be needed for the proper administration of or handling of any judicial, quasi-judicial or administrative proceedings with respect to the insurance provided for herein or in connection with claims cognizable hereunder.

“(c) Co-operate with the Commission in the disposition or settlement of any claim or loss arising in connection with the coverage provided under this subparagraph b of Paragraph GC-17, including assistance in any investigation, hearing or proceeding connected with such claim or loss, and including the prosecution or defense in the Contractor's own name, if required by the Commission, of appropriate proceedings for the appeal or review of administrative, judicial or quasi-judicial determination with respect to any such claims or losses, subject to the direction and control of the Commission; provided, however, that the Commission, at its option, may furnish counsel to represent the Contractor, at no cost to Contractor, and, provided further that if the Commission does not furnish such counsel, the Commission will bear the cost of reasonable counsel fees and counsel expenses incurred by the Contractor, and in any event will bear the cost of attendance of witnesses and court costs, all as approved by the Commission, in any case where the Commission re-



quires the Contractor to prosecute or defend the actions or proceedings above mentioned.

“(d) Save and hold harmless the Commission and its authorized representatives from any failure on the part of the Contractor to co-operate and furnish any available witness, notice, paper or document, which failure shall result in a loss to the Commission or its authorized representatives.

“(e) The Contractor will incorporate in his subcontracts, involving operations at the site of the Hanford Works, provisions similar to those in this subparagraph b of Paragraph GC-17. [110]

“(2) In the event the Commission finds it necessary to terminate the insurance provided above, the Commission agrees to give the Contractor written notice reasonably in advance of such termination.”

the workmen employed by Plaintiff upon the Project at Hanford Works, some of whom were members of the Defendant Teamsters Union, Local No. 839, and some of whom were members of the Defendant Operating Engineers, Local No. 370, were covered for industrial insurance and medical aid under the Industrial Insurance Act and Medical Aid Act of the State of Washington, and that said quoted provisions are true and correct quotations from said Construction Contract.

Supplemental Request for Admission No. 3. That as a part of the Construction Contract dated November 25, 1955, between the United States Atomic Energy Commission and Morrison-Knudsen Com-



pany, Inc., for the "Construction of Pumping Plant Additions, 100-F and 100-H Areas; and Office Additions and Modification of Vent Rooms, 100-B, 100-D and 100-F Areas at Hanford Works, Richland, Washington," there was included in the Specifications thereto, as a part of Supplement A to General Provisions-Standard Form 23A a paragraph reading as follows:

**"32. Prevailing Wage Rates and Allowances.**

"During the life of the Hanford Works Agreement, the Contractor agrees to pay laborers and mechanics engaged in the work hereunder at Hanford Works the scale of wages and allowances prevailing at Hanford Works (including all terms of any modification thereof) as determined by the Commission; provided, however, that in no case shall the Contractor be required to pay less than the applicable schedule of rates predetermined by the Secretary of Labor pursuant to the Davis Bacon Act and attached as Section 3 of Part IV, Wage Rates and Allowances of the Specifications. Sections 1 and 2 of Part IV set forth the scale of prevailing wages and allowances determined by the Commission as of the date indicated therein. There shall be no adjustment in the contract price, nor shall the Contractor be entitled to any additional compensation, in event of any increase or decrease in prevailing wages or allowances. 'Allowances' as used herein shall be construed to mean all payments made to or for the account of laborers or mechanics, other than wages. The Contractor shall cause appropriate pro-



visions to be inserted in all subcontracts whereby the subcontractors will be required to conform to the foregoing clause." [111]

Supplemental Request for Admission No. 4. That during portions of the period from January 1, 1953, to and including the date of June 6, 1956, there were in effect from time to time the following-mentioned Contracts between the United States Corps of Engineers and Various Contractors as named:

Contract No. DA-45-164-eng-2552 with the Power City Electric Company of Spokane, Washington, for Power Facilities.

Contract No. DA-45-164-eng-2557 with the Columbia Asphalt Company of Yakima, Washington, for Forward Access Roads.

Contract No. DA-45-164-eng-2566 with Hopkins Construction Company for the construction of Igloos.

Contract No. DA-45-164-eng-2571 with the L. A. Hoffman Company for the construction of a Nike site and base.

Contract No. DA-45-164-eng-2580 with Sound Construction Company for the Construction of Main Camp Facilities.

Contract No. DA-45-164-eng-2923 with Hopkins Construction Company for the construction of a Ferry Landing Access Road.



Contract No. DA-45-164-eng-2925 with Hopkins Construction Company for the construction of a Battalion Headquarters Building.

each of which Contracts called for the performance of work wholly within the Hanford Works Area and that portion thereof enclosed by the Barricade and that members of the Defendant Teamsters, Local No. 839, were employed upon many of said Projects under the terms and provisions of the Labor Agreement attached to the original Complaint of the Plaintiff herein as Exhibit A, and members of the Defendant Operating Engineers, Local No. 370, were employed upon many of said Projects under the terms and provisions of the Labor Agreement attached to the original Complaint of the Plaintiff herein as Exhibit B.

ALLEN, DeGARMO & LEEDY,  
and DORSEY & HAIGHT,

By /s/ GERALD DeGARMO,  
Counsel for Plaintiff. [112]

## EXHIBIT A

Contract No. AT(45-1)—562

This Agreement, entered into this 17th day of December, 1952, effective the 1st day of January, 1953, between the United States of America, represented by the Atomic Energy Commission (here-



inafter called the "Commission") and the Department of Labor and Industries of the State of Washington, represented by the Director thereof (hereinafter called the "Department"),

Witnesseth That:

Whereas, the Commission has heretofore entered into or will hereafter enter into certain contracts for construction of certain plants and facilities and work related thereto at the site of Hanford Works in or near Richland, Washington, and

Whereas, the extraordinary conditions and circumstances at the said Hanford Works are deemed by the Department to justify the adoption and promulgation of a Defense Projects Insurance Rating Plan providing for Industrial Insurance and Medical Aid benefits to injured workmen, their families and dependents under the terms and conditions hereinafter set forth, and

Whereas, Chapter 144, Laws of 1951 (uncodified) provides that the Department, upon the request of the Chairman of the United States Atomic Energy Commission, may approve or promulgate defense projects rating plans providing for insurance with respect to defense or other projects in the national interest, and

Whereas, the Chairman of the Commission has stated that a defense projects insurance rating plan providing for compensation insurance to employees of certain Commission contractors will effectively



aid the national interest and has requested the Department to approve a defense projects insurance rating plan providing for insurance for employees of such contractors as the Commission may desire to be insured hereunder, and

Whereas, the promulgation of such plan will require the performance of certain undertakings on the part of each of the parties hereto, as hereinafter set forth,

Now, Therefore, in consideration of the premises and the mutual undertakings and obligations contained herein, the parties hereto have agreed, and do hereby agree, as follows: [113]

### Defense Projects Insurance Rating Plan

1. Contractors engaged in the construction of plants or facilities and contractors engaged in work related thereto at the site of the Hanford Works, with respect to whom the Commission advises the Department the coverage of the Defense Projects Insurance Rating Plan hereinafter set forth is to apply, shall be deemed to be insured under this Agreement; provided, however, that compensation awards and benefits shall be payable hereunder only with reference to claims of workmen (and their families and dependents) injured in the course of employment which result from work performed at the site of Hanford Works by contractors insured hereunder.

2. The Industrial Insurance and Medical Aid Acts of the State of Washington shall apply with



full force and effect with respect to all contractors (hereinafter referred to as "employers") and all workmen and their families and dependents as are or may be afforded coverage hereunder, except that under this Plan certain obligations and requirements of said Industrial Insurance and Medical Aid Acts which otherwise might be imposed upon employers are hereby modified expressly or by necessary inference and certain obligations in lieu thereof are hereby assumed by the parties hereto. Where and to the extent such obligations and requirements are assumed by virtue of this Agreement, employers insured hereunder are exempt from such obligations and requirements under said Industrial Insurance and Medical Aid Acts.

### 3. Deposit.

The Commission shall deposit, in a bank to be selected by the Department and approved by the Commission, separate funds to be maintained in the name of the Department, designated as follows:

(a) Contract No. AT(45-1)-562, Industrial Insurance Law Account.

(b) Contract No. AT(45-1)-562, Medical Aid Act Account.

(c) Contract No. AT(45-1)-562, Pension Reserve Fund Account.

The initial deposit in Account (a) shall be Twenty-five Thousand Dollars (\$25,000).

The initial deposit in Account (b) shall be Ten Thousand Dollars (\$10,000). [114]



Deposits in Account (c) shall be made upon direction of the Department and in such amount or amounts as will guarantee full payment of all pension awards made by the Department in accordance with the pension schedules of the Industrial Insurance Act or such increased awards as may hereafter be enacted by the legislature.

The Accounts created in accordance with this paragraph and all deposits by the United States into said Accounts, as well as any other Accounts, Funds or deposits subsequently created or made under any provision of this contract or any amendments thereto, shall be regarded by the parties hereto as trusts created and maintained for the benefit of injured workmen, their families and dependents; title to all such monies shall vest in the Department, as trustee, at the time of deposit thereof into said Accounts.

All the above Accounts shall be maintained in the foregoing amounts until such time as the Department shall notify the Commission in writing of an assessment predicated and based upon one or more of the eventualities set forth in subparagraphs (a) through (e) below:

(a) The entry by the Department and evidence of disbursements in accordance therewith of an award for temporary total, temporary partial or permanent partial disability under the provisions and schedules of the Industrial Insurance Act. Check for this purpose shall be drawn against Account (a).



(b) The entry by the Department of an award in a case involving permanent and total disability. Check for this purpose shall be drawn against Account (c).

(c) The entry by the Department of an award in a death case, providing for payments to dependents qualifying for pension payments in accordance with the Industrial Insurance Act. Check for this purpose shall be drawn against Account (c).

(d) Payments and expenditures made by the Department for medical services to injured workmen in accordance with the provisions of the Medical Aid Act. Check for this purpose shall be drawn against Account (b).

(e) Expenditures by the Department for services and expenses in accordance with paragraph 9, hereof. Check for this purpose shall be drawn against Account (a).

Upon notice of assessment by the Department predicated and based upon one or more of the eventualities set forth in subparagraphs (a) to (e) of this paragraph or upon [115] notice by the Department of any adjustments in amount as may from time to time be necessary, the Commission shall make prompt deposit into the appropriate Account the amount of any such assessment or adjustment. Funds deposited in Account (c) in accordance with the provisions of subparagraphs (b) and (c) of paragraph 2, hereof, shall be deposited at such interest assumption rate as may be provided for in



the Industrial Insurance Act at the time such pensions are established.

The Commission will not be under any cost or expense with respect to future pension increases to then existing pensioners which may be authorized to be paid by the State of Washington; provided, however, that the Commission will bear the expense of future increases which are authorized by the Legislature of the State of Washington to be paid to any pensioner whose pension has arisen as a result of an injury sustained in the course of extra hazardous employment and from employment by an employer covered by this agreement if at the date of the injury (or first day of disability in occupational disease cases) out of which such pension arises, such employer was not legally obligated to pay business and occupation taxes to the State of Washington solely by reason of Section IX (b) of the Atomic Energy Act.

4. Withdrawals: Withdrawals from the bank accounts provided for in paragraph 2, hereof, shall be by check issued by the Department and shall be for the sole and express purpose of making compensation payments to workmen injured in the course of employment at the site of Hanford Works (or their families or dependents in case of death) or to pay the cost of medical aid services incident thereto or to pay administrative expenses.

Any such withdrawal checks shall be signed by any two of the following persons or other persons



agreed to be the parties hereto in writing, who shall be appropriately bonded to the parties hereto for faithful performance in an amount not less than \$10,000 each: George Glenn, Maxine Daly, Charlotte Miller and Grace Reeder.

5. (a) As soon as possible after October 1 of each year the Department shall cause the State Insurance Commissioner to expert Account (c) to ascertain its standing as of October 1 of that year, and the relationship of its outstanding annuities at their then value to the cash on hand or at interest belonging to that Account. The Department shall promptly report the result of the examination to the Commission in writing not later than December 31 following. If the report shows that there was on said October 1, in the Account (c), in cash or at interest, a greater sum than the then annuity value of the outstanding pension obligations of that Account, the surplus shall be forthwith turned over to the Commission. But, if the report shows the contrary condition of the Account, the deficiency shall be forthwith made good by a deposit of such sums by the Commission as directed by the [116] Department.

(b) It is agreed that the Department shall keep accurate accounts of Account (c) and the investment and earnings thereof, to the end that, as nearly as possible, the total Account (c) shall at all times be properly and fully invested, consistent with current demands by the Department for pension or



lump sum payments payable by the Department in accordance with this Agreement.

(c) Whenever in the judgment of the parties hereto there shall be in said Account (c) funds in excess of that amount deemed by the parties to be sufficient to meet current expenditures properly payable therefrom in accordance with the pension schedules of the Industrial Insurance Act, the Commission may authorize the Department to direct the State Finance Committee to invest such excess funds in registered U. S. government securities. Such securities shall be held by and remain in the custody of such party or parties or the State Treasurer and at such place or places as may be agreed upon by the parties hereto.

6. Audit of Funds. All transactions involving the Accounts provided for in this Agreement shall be subject to audit by the Commission at any and all times.

7. Examination of Records.

(a) The Department agrees that the Comptroller General of the United States or any of his duly authorized representatives shall, until the expiration of three years after final payment under this contract, have access to and the right to examine any directly pertinent books, documents, papers and records of the Department involving transactions related to this contract.

(b) The Department further agrees to include in all its subcontracts hereunder a provision to the



effect that the subcontractor agrees that the Comptroller General of the United States or any of his duly authorized representatives shall, until the expiration of three years after final payment under this Agreement with the Commission, have access to and the right to examine any pertinent books, documents, papers, and records of such subcontractor involving transactions related to the subcontract. The term subcontract as used herein includes purchase orders.

(c) Nothing in this Agreement shall be deemed to preclude an audit by the General Accounting Office of any transaction under this contract.

#### 8. Warrant Registers and Payroll Reports.

(a) The Department will furnish to the Commission two copies of its Warrant Register at least once each month during the period of this Agreement. The Warrant Registers thus furnished will be used by the Commission for audit and control purposes.

(b) On or before the twenty-fifth day of each January, April, July and October occurring during the period of this Agreement, the Commission will procure from each [117] contractor then insured hereunder and will furnish the Department, or will require such contractors directly to furnish the Department, true and accurate payrolls and reports as to the aggregate number of workman hours during which workmen were employed by him during the preceding calendar quarter. The "nature of work"



will be shown on each such report as " work under Contract No. AT(45-1)-562."

9. Administrative Costs and Expenses. In consideration of the services rendered by the Department under this Agreement and in order to assure compliance with national security requirements, the Department shall assign one or more specific employees to administer claims and other matters relating to this Agreement. Such employees shall be subject to the approval of the Commission but it is expressly agreed that such employees are employees of the Department for all intents and purposes whatsoever.

10. Reports of Accidents. Because of the necessity for safeguarding against disclosure of restricted data, the Department agrees to accept descriptions of accidents furnished by employers even though full details may not be given. Because of such security requirements, all notices of Award, Orders, notices of appeal, correspondence or other material relating to any and all claims cognizable hereunder will be addressed by the Department to the particular employer concerned, care of the Commission, Box 550, Richland, Washington. The Department likewise understands that, for security and other control purposes, all Accident Reports and other material furnished by employers or contract physicians and hospitals, if any, will be required to be routed to the Department through the Commission. The Commission will endeavor to assure that the Department will be provided with sufficient



information to enable it properly to perform its functions. Should the Department desire additional information with respect to any case, the matter will be taken up through conference and a solution sought which will protect the interests of all persons or parties concerned.

11. (a) It is understood and agreed that coverage under this Agreement may extend to designated prime contractors of the Commission and their designated lower tier contractors and that wherever in this Agreement the word "employer" is used it may be construed as applying to such prime contractors of the Commission and their lower tier contractors.

(b) It is further understood and agreed that the United States of America and the employers named as insured under this Agreement shall be considered as persons aggrieved having the right to appeal to the Board of Industrial Insurance Appeals and to the courts under the Workmen's Compensation Statutes and other applicable law. It is provided, however, that neither the Commission nor any such employer thereof will resort to use of informal procedures permitting protests of Department publication and mailing of such Orders. [118]

12. In order that the Commission may fulfill necessary audit and control functions, the Department agrees to furnish copies in triplicate of all Orders, pertinent correspondence, medical reports, etc., relating to all claims cognizable under this



Agreement. The Commission agrees in turn to route copies thereof to employers concerned.

13. Medical Aid Contributions.

Employees of employers insured hereunder, insofar as they may be engaged in work at the site of Hanford Works, shall not be required to contribute to the Medical Aid Act account created hereunder until such time as a base rate has been established by the Department and until such time thereafter as the Commission establishes payroll deduction procedures governing employers insured hereunder.

14. Anti-discrimination.

The Department, in performing the work required by this Agreement, shall not discriminate against any employee or applicant for employment because of race, creed, color, or national origin. The Department shall cause provisions similar to the foregoing to be inserted in all subcontracts under this Agreement.

15. Covenant Against Contingent Fees.

The Department warrants that no person or selling agency has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee. Breach of this warranty shall give the Commission the right to annul the Agreement without liability or, in its discretion, to deduct from the contract price or consideration the amount of such commission, percentage, brokerage, or con-



tingent fee. This warranty shall not apply to commissions payable by the Department upon contracts or sales secured or made by bona fide employees of the Department or through bona fide established commercial or selling agencies maintained by the Department for the purpose of securing business.

#### 16. Officials Not to Benefit.

No member of or delegate to Congress or resident commissioner shall be admitted to any share or part of this Agreement or to any benefit that may [119] arise therefrom, but this provision shall not be construed to extend to this Agreement if made with a corporation for its general benefit.

#### 17. Disclosure of Information.

It is understood that disclosure of information relating to the work contracted for hereunder to any person not entitled to receive it, or failure to safeguard all secret, confidential and restricted matter that may come to the Department or any person under its control in connection with the work under this Agreement, may subject the Department, its agents, employees and subcontractors to criminal liability under the laws of the United States. See the Atomic Energy Act of 1946 (Public Law 585-79th Congress). See also Title 1 of an Act approved June 15, 1917, (40 Stat. 217; 50 U. S. C. 31-42) as amended by an Act approved March 28, 1940 (54 Stat., Chap. 79); and the provisions of an Act approved January 12, 1938 (52 Stat. 3; 50 U. S. C., 45-45d), as supplemented by Executive Order No. 8381, March 22, 1940, 5 F.R. 1147.



The Department agrees to conform to all security regulations and requirements of the Atomic Energy Commission. Except as the Commission may authorize, in accordance with Section 10 (b) (5) (B) of the Atomic Energy Act of 1946, the Department agrees not to permit any individual to have access to restricted data until the Federal Bureau of Investigation shall have made an investigation and report to the Commission on the character, association, and loyalty of such individual and the Commission shall have determined that permitting such person to have access to restricted data will not endanger the common defense or security. The term "restricted data" as used in this section means all data concerning the manufacture or utilization of atomic weapons, the production of fissionable material, or the use of fissionable material in the production of power, but shall not include any data which the Commission from time to time determines may be published without adversely affecting the common defense and security. The Department will not, however, permit any alien employed or to be employed by it to have access to classified documents, drawings, specifications, and "restricted data" without the written consent beforehand of the Commission. The Department shall insert in all subcontracts under this Agreement provisions making the text of this article applicable to such subcontracts. [120]

18. This agreement shall expire 5 years after the effective date hereof; provided, however, that the parties may agree in writing to extend such 5



year period; and provided, that this agreement may be terminated by either party by giving 6 months notice to the other party; and provided, further, that this agreement may be terminated at any time mutually agreed upon by the parties hereto. It is the intention of the parties that the provisions of this agreement shall not extend or apply to any claims arising out of work performed subsequent to the date of expiration or termination of this agreement as aforesaid or after the Commission ceases to operate and manage the Hanford Works. It is the intention of the parties that paragraphs 1 (except that the Commission will no longer designate employers to be deemed insured hereunder), 2, 4, 5, 6, 7, 11, 12, 14, 15, 16, 17, 19, 20, 21, shall be of continuing effect, insofar as such paragraphs are applicable, and together with the provisions set forth hereinafter shall govern the rights and duties of the parties after such expiration or termination or after the Commission ceases to operate and manage the Hanford Works.

(a) The Department agrees to carry on the defense of all claims, suits and legal proceedings pending or which may be instituted subsequently against the Department or employers insured hereunder in accordance with the provisions of the Industrial Insurance and Medical Aid Acts of the State of Washington appertaining to or in connection with the work of such employers at Hanford Works; and the Department shall assume responsibility for the payment of any and all pensions and awards thereto-



fore or thereafter made pursuant to said Industrial Insurance and Medical Aid Acts.

(b) In order to provide the Department with sufficient funds to enable it to carry out the provisions of this paragraph, the Commission shall establish and maintain in the name of the Department in a bank to be selected by the Department and approved by the Commission a reserve fund in such amount as will be deemed by the Department from time to time to be necessary for performance of the obligations assumed by the Department under this paragraph. The sole purposes of this fund will be to provide for payment in full by the Department of all pensions and awards, both past and future, provided for in the schedules of the [121] Industrial Insurance and Medical Aid Acts or any amendments thereto and resulting from work of employers insured hereunder and for reimbursement to the Department of expenditures made and to be made by the Department for services and expenses directly attributable to carrying out the provisions of this paragraph.

(c) Amounts at such time remaining in Accounts (a), (b) and (c) under paragraph 2, shall be applied toward the reserve fund established under subparagraph (b) of this paragraph. Should the total of these Accounts be insufficient to create the reserve fund required by the Department the balance necessary will be deposited into said reserve fund by the Commission. Should the contrary situation exist, the Department will immediately refund



to the Commission the excess of the total of Accounts (a), (b) and (c) over that amount necessary to establish the reserve fund required by the Department. However, nothing in this subparagraph (c) shall be construed as limiting the right of the Department to require further deposits by the Commission or its assigns or successors if the fund initially created under this paragraph proves to be insufficient to permit the Department to carry out the provisions of subparagraph (a) of this paragraph.

(d) Should the amount or amounts required to be deposited by the Commission for the creation of or replenishment of the reserve fund established under the provisions of this paragraph at any time prove to be in excess of the sums which will eventually be required for the purposes of subparagraph (a) of this paragraph, the Department will promptly refund to the Commission or its assigns or successors, if any, the amount of such excess.

19. The Department reserves the right further to approve or direct changes or modifications of this Agreement in accordance with Chapter 144, Laws of 1951.

20. By virtue of the authority contained in Chapter 144, Laws of 1951, the foregoing Defense Project Insurance Rating Plan is hereby approved by the Department. Performance hereunder by the Commission shall be deemed and shall constitute full compliance by all employers insured hereunder with all provisions and requirements of the In-



dustrial Insurance and Medical Aid Acts of the State of Washington as may be affected expressly or by necessary inference by the provisions of this Agreement. [122]

21. This Agreement is entered into on behalf of the Commission pursuant to the authority conferred by the Atomic Energy Act of 1946 and the First War Powers Act of 1941, both as amended.

In Witness Whereof, the parties hereto have set their hands and seals to this Contract No. AT(45-1)-562.

THE UNITED STATES OF AMERICA ACTING  
THROUGH THE ATOMIC ENERGY COM-  
MISSION,

By /s/ DAVID F. SHAW,  
Manager.

THE DEPARTMENT OF LABOR AND IN-  
DUSTRIES OF THE STATE OF WASH-  
INGTON,

By /s/ A. M. JOHNSON,  
Director.

Approved:

OFFICE OF ATTORNEY GENERAL, STATE  
OF WASHINGTON,

By /s/ BERNARD A. JOHNSON,  
Assistant Attorney General.

Dated: 12/17/52. [123]



## Appendix "A" to Contract No. AT(45-1)-562

1. Administrative expense payments to the Department in accordance with Paragraph 9, of the contract shall be payable by the Commission each month; the Commission's obligation to make such payments shall commence on the first day of the first month in which ten or more claims cognizable under the contract are reported to the Department. It is provided, however, that in addition to actual salaries the Commission will reimburse the Department for such other and reasonable incidental expenses as may be attributable to services performed in accordance with Paragraph 9.

2. The Department agrees that the first of its employees assigned to the administration of claims and other matters under the provisions of Paragraph 9, shall be one of the employees presently assigned to duties under General Electric's Contract No.W-7412-eng-25. The Department further agrees that the number of employees assigned under the said General Electric Contract and General Electric's administrative expense payments shall be correspondingly reduced and that when practicable further transfers of employees from one contract to another and corresponding reductions in General Electric's obligations with respect to administrative expense payments shall be made.

Subsequent adjustments in the manner and/or amount of administrative expense payments will be by agreement of the parties and will depend upon increases or decreases in the Department's ad-



ministrative load with respect to claims filed under this contract.

3. In consideration of administrative expense allowances payable under Paragraph 9, of Contract No. AT(45-1)-562 and Paragraph 1, of this Appendix, the Department agrees to provide three copies of all Orders of Award or adjudication, medical examination reports, statements, essential correspondence, etc., with reference to all claims cognizable under Contract No. AT(45-1)-562. The Department also agrees that it will make no payment to any claimant or beneficiary before the seventh day following the date of mailing of any Order of Award or adjudication to the Commission and/or employers insured hereunder.

4. In order to facilitate Department handling of claims hereunder, the Commission agrees that employers insured under Contract No. AT(45-1)-562 will, where reasonably possible, provide the Department with data supplementary to that contained in Accident Report forms; such supplementary data shall, as may be appropriate to particular cases, consist of detailed medical statements of fact and conclusions and statements by nurses, witnesses, supervisors or other persons with knowledge of pertinent circumstances. [124]

5. The Department agrees to provide the Commission informally, by letter or telephone call reasonably in advance of publication of Orders of Award or adjudication, notice with respect to any award for permanent total or permanent partial



disability which equals or exceeds 25% of the statutory maximum for unspecified disabilities or 25% of the whole statutory value of any specified member or organ, not including fingers or toes.

6. The Department agrees that it will consult with the Commission with respect to all phases of claims handling and adjudication of any and all claims involving hazards peculiar in kind or degree to the Hanford Works.

7. The Commission agrees to do such things as are reasonably practicable by way of providing assistance to the Department with respect to field investigations by Department investigators, interviews with witnesses, etc.

8. Upon reasonable notice to the Commission's Office of Safety or Office of Assistant General Counsel, Insurance Section, the Commission will arrange for inspections and other business visits of Department safety or other personnel to construction work sites within the Hanford Works barricaded area; provided, however, that it is understood by the parties hereto that nothing contained herein shall be construed as having applicability to any portion of such work as may now or hereafter be classified as an area of restricted access in accordance with standards and regulations of the Commission derived from the Atomic Energy Act of 1946 as amended.

9. If experience under Contract AT(45-1)-562 and this Appendix is deemed by the parties thereto



to warrant incorporation of procedures for use of "short-form" Accident Report forms under certain circumstances, the use of such forms shall commence upon any date agreed upon by the parties.

10. It is understood and agreed that this Appendix "A" is hereby made a part of Contract No. AT(45-1)-562 by this provision.

/s/ D.F.S.,

/s/ A.M.J.,

/s/ B.A.J.

Receipt of Copy acknowledged.

[Endorsed]: Filed June 10, 1957. [125]

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[Title of District Court and Cause.]

DEFENDANTS' ANSWERS TO PLAINTIFF'S  
SUPPLEMENTAL REQUESTS FOR AD-  
MISSIONS

Defendants answer plaintiff's supplemental requests for admissions under Rule 36 as follows:

Answer to Supplemental Request No. 1: Admitted.

Answer to Supplemental Request No. 2: Plaintiff's counsel have submitted to defendant's counsel a document purporting to be a true copy of a construction contract dated November 25, 1955, between the plaintiff and United States Atomic



Energy Commission. Subject to proof at the trial that the document so submitted is in fact a correct copy, the defendants admit that the contract dated November 25, 1955, described in paragraph IV of the plaintiff's amended complaint, contained the several provisions quoted in this request.

Answer to Supplemental Request No. 3: Subject to the same reservation, the defendants admit the accuracy of the quotation contained in this request.

Answer to Supplemental Request No. 4: The defendants admit that from time to time during the period from January 1, 1953, to and including June 6, 1956, the United States Corps of Engineers had in effect contracts with various contractors for the performance of work wholly within the Hanford Works Area and the portion thereof enclosed by the barricade. The defendants [126] are unable to identify the particular contracts indicated in this request.

The defendant Teamsters Local 839 admits that certain of its members were employed on some of said projects during that period, but deny that they were employed under the contract dated December 19, 1955, a copy of which is attached to the plaintiff's original complaint as Exhibit A.

The defendant Operating Engineers Local No. 370 admits that certain of its members were employed on some of said projects during that period, but deny that they were employed under the contract of December 24, 1955, a copy of which is at-



tached to the plaintiff's original complaint as Exhibit B.

/s/ R. MAX ETTER,

Attorney for Defendant, International Union of  
Operating Engineers, Local No. 370.

BASSETT, VANCE & DAVIES,

/s/ STEPHEN V. CAREY,

Attorneys for Defendants, Teamsters, etc., Local No.  
839, Joint Council of Teamsters No. 28 and  
Western Conference of Teamsters.

Receipt of Copy acknowledged.

[Endorsed]: Filed June 6, 1957. [127]

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[Title of District Court and Cause.]

STIPULATION RE DISMISSAL OF JOINT  
TEAMSTERS No. 28 AND WESTERN CON-  
FERENCE OF TEAMSTERS

This cause came on regularly for trial on June 10, 1957, all parties appearing by their respective attorneys of record; counsel for Joint Council of Teamsters No. 28 and Western Conference of Teamsters challenged the jurisdiction of the Court and moved to dismiss this action as to each of said defendants and the matter having been argued by counsel and taken under consideration by the Court, the Court on convening of Court on June 11, 1957, announced that said challenge to the jurisdiction and said motion to dismiss as to said two defendants should be granted; and thereafter the case



proceeded for the trial of the issues of liability as between the plaintiff and the remaining defendants, Engineers Local 370, and Teamsters Local 839, and

Whereas, for procedural reasons it is desirable that the entry of a formal judgment dismissing the action as to Joint Council of Teamsters No. 28 and Western Conference [128] of Teamsters be deferred until all issues shall have been decided, It Is Stipulated that the entry of a formal order or judgment dismissing Joint Council of Teamsters No. 28 and Western Conference of Teamsters be postponed and when a final judgment is entered it shall dismiss the action as to said two defendants in accordance with the oral decision of the Court announced on June 11, 1957, without prejudice to the plaintiff's right to appeal.

Dated this 19th day of June, 1957.

ALLEN, DeGARMO & LEEDY,  
and DORSEY & HAIGHT,

By /s/ GERALD DeGARMO,  
Attorneys for Plaintiff.

/s/ STEPHEN V. CAREY,  
Attorney for Joint Council of Teamsters No. 28 and  
Western Conference of Teamsters.

Approved this 19th day of June, 1957.

/s/ SAM M. DRIVER,  
United States District Judge.

[Endorsed]: Filed June 19, 1957. [129]



[Title of District Court and Cause.]

## FINDINGS OF FACT AND CONCLUSIONS OF LAW UPON ISSUE OF LIABILITY

This Cause having come on regularly for trial on the 10th day of June, 1957, before the undersigned Judge of the above-entitled Court, sitting at Spokane within said District pursuant to the written Stipulation of the parties hereto, through their respective counsel of record, that the cause be "transferred for trial from Yakima to Spokane" and that said cause be first "assigned for hearing to determine the question of liability only, and if liability is found in favor of the Plaintiff it shall be continued and assigned for hearing at a later date for the determination of damages," which Stipulation of the parties was approved by the Court and Plaintiff Morrison-Knudsen Company, Inc., a corporation, having appeared at said hearing by representatives and witnesses and having been represented by Gerald DeGarmo and Harold J. Hunsaker of Allen, DeGarmo & Leedy and Dorsey & Haight, its counsel of record, the Defendant International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local No. 839 (which will hereafter for sake of brevity be referred to [131] merely as Teamsters Local No. 839), having appeared by representatives and witnesses and having been represented by Stephen V. Carey, of Bassett, Vance & Davies, its counsel of record, the Defendant International Union of Operating



Engineers, Local No. 370 (which will hereafter for sake of brevity be referred to as Operating Engineers Local No. 370), having appeared by representatives and witnesses and having been represented by R. Max Etter, its counsel of record, and the Defendants Joint Council of Teamsters No. 28 and Western Conference of Teamsters having appeared by Stephen V. Carey, of Bassett, Vance & Davies, their counsel of record, and the Court at the commencement of said trial and before the introduction of any evidence having sustained and granted the oral Motion of Plaintiff to strike from the Affirmative Defenses of the Defendants, Teamsters Local No. 839 and Operating Engineers Local No. 370, those portions thereof as set forth in their respective Answers to the Amended Complaint of Plaintiff reading as follows:

“Said area, although in part within the exterior boundaries of Benton County, has always been regarded by labor unions and by contractors as segregated from the remainder of Benton County for the purpose of negotiating labor agreements and was so regarded when the labor agreements described in the plaintiff’s original and amended complaints were being negotiated. For many years prior to and during the year 1955 all contractors, contracting with the United States Atomic Energy Commission for the performance of construction work in said area, have negotiated their labor agreements with labor unions, including the defendant Local 839 (Local No. 370), through their bargaining representative



known as Hanford Contractors Negotiating Committee; and all of such contractors, who at the same time were engaged in performing construction work in Benton County and adjoining counties but not within said area, negotiated their labor agreements with labor organizations, including Local 839 (Local No. 370), through another and different bargaining representative known as Associated General Contractors of America, Inc., Spokane Chapter.

“The agreement dated the 19th day of December, 1955, by and between Associated General [132] Contractors of America, Inc., Spokane Chapter, and Teamsters Unions Locals 690, 148, 556, 551 and 839 (attached to plaintiff’s original complaint as Exhibit ‘A’) does not apply and was not intended to apply to construction work to be performed by plaintiff for Atomic Energy Commission under the contract described in paragraph IV of the amended complaint.

“The agreement dated the 24th day of December, 1955, by and between Associated General Contractors of America, Inc., Spokane Chapter, and Local No. 370 Engineers Union (attached to plaintiff’s original complaint as Exhibit ‘B’) does not apply, and was not intended to apply, to construction work to be performed by plaintiff for Atomic Energy Commission under the contract described in Paragraph IV of the amended complaint.”

and thereafter said cause having proceeded to trial upon the issues as then presented by the pleadings, in the light of the requests and admissions of the respective parties pursuant to Rule 36, and upon the



trial amendment of Defendants, Teamsters Local No. 839 and Operating Engineers Local No. 370, as permitted by the Court, pleading additional Affirmative Defenses to the Amended Complaint of the Plaintiff and the Court, at the conclusion of the Plaintiff's case, having granted the oral challenge of the Defendants, Joint Council of Teamsters No. 28 and Western Conference of Teamsters, to the jurisdiction of the Court and Motion to dismiss said Defendants from this cause for lack of jurisdiction in the Court, and the Court having, at the close of the case on the 19th day of June, 1957, orally announced its Decision herein, and being fully advised in the premises now makes the following:

### Findings of Fact

#### I.

That at all times hereinafter mentioned Morrison-Knudsen Company, Inc., was and it now is a corporation duly organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business at Boise, Idaho, and qualified to do business as a foreign [133] corporation within the State of Washington. That the activities of the Plaintiff, as hereinafter mentioned, were carried on in Benton County within the Southern Division of the above-entitled District and Court, and that in the prosecution of the activities hereinafter mentioned Plaintiff was engaged in an industry affecting commerce, as defined by the Labor Management Rela-



tions Act of 1947 of the United States and the National Labor Relations Act of the United States.

## II.

That the Defendant International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local No. 839, at all times herein mentioned, was and it now is a voluntary unincorporated association and Labor Union and that said Teamsters Local No. 839 during all of the times hereinafter mentioned acted as the representative and bargaining agent for its members employed in all Heavy, Highway and Engineering Construction work within the Eastern portion of the State of Washington, East of the 120th Meridian, including Benton County, and certain portions of the State of Idaho.

That the Defendant Joint Council of Teamsters No. 28, at the times hereinafter mentioned, was and is a voluntary unincorporated association composed of Teamsters Local No. 839 and other Local Unions of the same International within the State of Washington.

That the Defendant Western Conference of Teamsters, at the times hereinafter mentioned was and is a voluntary unincorporated association composed of Joint Council of Teamsters No. 28 and other similar joint councils located within the Western States of the United States.

That the Defendant International Union of Operating Engineers, Local No. 370, at the times herein-



after mentioned, was and is a voluntary unincorporated association and Labor Union and [134] said Operating Engineers Local No. 370, through its officers and business manager acted as representative and bargaining agent for its members employed in all Heavy, Highway and Engineering Construction work within the Eastern portion of the State of Washington, East of the 120th Meridian, including Benton County, and certain portions of the State of Idaho.

That each of Defendant Teamsters Local No. 839 and Operating Engineers Local No. 370, during the times hereinafter mentioned, either had and maintained its principal office, or had an office or agents engaged in representing it or acting for its employee members within the Eastern District of Washington.

### III.

That this action was brought and prosecuted by Plaintiff pursuant to and in accordance with and the jurisdiction of the Court is based upon the provisions of the Labor Management Relations Act of 1947 and more particularly Section 301 thereof, otherwise known as 29 U.S.C.A. Section 185. That the members of Teamsters Local No. 839 and of Operating Engineers Local No. 370 which were employed by Plaintiff, as hereinafter mentioned, were "employees in an industry affecting commerce as defined" in the Labor Management Relations Act of 1947 of the United States and the National Labor Relations Act of the United States.



IV.

That on or about the 25th day of November, 1955, Plaintiff entered into a Contract with the United States Atomic Energy Commission for the construction of Pumping Plant Additions, Office Additions and Modifications at the Hanford Atomic Products Operation within Benton County, State of Washington, a full, true and correct copy of which was introduced in evidence herein as Plaintiff's Exhibit 1 and thereafter and on or about the 28th day of November, 1955, commenced the performance of said work and for the purpose of the performance of said Contract employed upon the [135] Project members of Teamsters Local 839 and of Operating Engineers Local No. 370.

V.

That in February of 1955, the Plaintiff became and has at all times since been a member in good standing of Associated General Contractors of America, Inc., Spokane Chapter, and as such member Plaintiff assigned and delegated to said Associated General Contractors of America, Inc., Spokane Chapter, its bargaining rights covering all employee members of Teamsters Local No. 839 and of Operating Engineers Local No. 370 as employed by Plaintiff engaged in Heavy, Highway and Engineering Construction work within the Territory as covered by the Labor Agreements negotiated by said Associated General Contractors of America, Inc., Spokane Chapter. Pursuant to such delegated authority and on behalf of Plaintiff, as one of its



members, and for the account and benefit of Plaintiff the Associated General Contractors of America, Inc., Spokane Chapter, as of December 19, 1955, negotiated and entered into a Labor Agreement with Teamsters Local 839, a copy of which is attached to the original Complaint of the Plaintiff herein as Exhibit "A," and a copy of which was introduced in evidence herein as Plaintiff's Exhibit 2, and under date of December 24, 1955, negotiated and entered into a Labor Agreement with Operating Engineers Local No. 370, a copy of which is attached to the original Complaint of the Plaintiff herein as Exhibit "B," and a copy of which was introduced in evidence herein as Plaintiff's Exhibit 3. That in the Labor Agreement, Plaintiff's Exhibit 2, with the Defendant Teamsters Local 839, it was provided in part as follows:

"Article II—Territory and Work Covered:

"Section 1. This Agreement shall cover all Heavy, Highway and Engineering construction work in the following counties or parts of counties East of the 120th Meridian: Grant, Ferry, Stevens, Pend Oreille, Chelan, Lincoln, Spokane, Adams, Whitman, Benton, Franklin, Walla Walla, Garfield, Asotin, Columbia, Okanogan, Douglas, Kittitas and [136] Yakima in the State of Washington; and Boundary, Bonner, Kootenai, Benewah, Shoshone, Latah, Nez Perce, Lewis, Clearwater, and the North one-half of Idaho County in the State of Idaho. It will be noted that Locals 690,



148, 556, 551 and 839 do not have jurisdiction in Kittitas or Yakima Counties even though those counties extend East of the 120th Meridian. Further, that Local 551's territory extends to a line drawn east and west through Riggins and parallel to the 46th Parallel."

"Article VII—No Strike—No Lockout:

"It is mutually agreed that there shall be no strikes, lockouts, or other slowdowns or cessation of work authorized by either party on account of any labor differences pending the full utilization of the grievance machinery set up in Article IX. Provided, that employees covered by this Agreement shall not be expected to pass through a legally established picket line which has been placed by another American Federation of Labor Union."

"Article VIII—Other Employers and Subcontractors:

\* \* \*

"Section 3. There shall be no special job agreements."

That in the Labor Agreement with the Defendant Operating Engineers Local No. 370 it was provided in part as follows:

"Article II—Territory and Work Covered

"Section 1. This Agreement shall cover all Heavy, Highway and Engineering construction work in the following counties or parts of counties



east of the 120th Meridian: Adams, Asotin, Benton, Chelan, Columbia, Douglas, Ferry, Franklin, Garfield, Grant, Kittitas, Lincoln, Okanogan, Pend Oreille, Spokane, Stevens, Walla Walla, Whitman and Yakima, in the State of Washington; and Benewah, Bonner, Boundary, Clearwater, Kootenai, Latah, Lewis, Nez Perce, Shoshone, and the north one-half of Idaho County, in the State of Idaho.”

“Article VIII—No Strike—No Lockout

“It is mutually agreed that there shall be no strikes, lockouts, or other slowdowns or cessation of work authorized by either party on account of any labor differences pending the full utilization of the grievance machinery set up in Article X. Provided, that employees covered by this Agreement shall not be expected to pass through a legally established picket line which [137] has been placed by another American Federation of Labor Union.”

“Article IX—Other Employers and Subcontractors

\* \* \*

“Section 3. There shall be no special job agreements.”

That each of said Labor Agreements heretofore mentioned, being Plaintiff's Exhibits 2 and 3, became effective according to its terms and provisions on January 1, 1956, and remained in full force and effect throughout the years 1956 and 1957 to and including the dates covered by the trial of this action.



## VI.

That during the year 1952, there was formed at Hanford Works and at the instigation of the United States Atomic Energy Commission a group known as Hanford Contractors Negotiating Committee, which in that year negotiated a Labor Agreement on behalf of "the signatory construction contractors, representing and acting for contractors who presently or during the life of this Agreement become signatory to this Agreement and perform construction, alteration or repair of public works at the Hanford Works, State of Washington" for the Atomic Energy Commission, a copy of which was introduced in evidence herein as Plaintiff's Exhibit 6, and which said Agreement became effective as of October, 1952, and remained in force and effect until terminated as hereinafter stated. That each of Defendants Teamsters Local 839 and Operating Engineers Local 370 became a signer of and a party to said Labor Agreement commonly known and referred to as the "Hanford Works Agreement," and although certain contractors having contracts with the Atomic Energy Commission during the years 1952 to 1955, both inclusive, became signers of said Agreement the Plaintiff never signed said Hanford Works Agreement or authorized the Hanford Contractors Negotiating Committee to negotiate for or [138] represent it. By written notification of December 29, 1955, (Defendants' Exhibit 16) and as admitted by the Defendants Teamsters Local No. 839 and Operating Engineers Local No. 370 (See Plaintiff's Requests for Admissions Under



Rule 36—(10) and (13) and Defendants' Answers thereto), the Hanford Works Agreement, Plaintiff's Exhibit 6, was terminated as of December 31, 1955.

## VII.

That upon the termination of the Hanford Works Agreement (Defendants' Exhibit 16), the Defendants Teamsters Local No. 839 and Operating Engineers Local No. 370, jointly and severally demanded of Plaintiff, through its authorized bargaining agent and representative Associated General Contractors of America, Inc., Spokane Chapter, the continuance of furnishing by Plaintiff of free bus transportation from the North Richland Bus Terminal to the site of work within the Hanford Atomic Products Operation area for their members employed by Plaintiff, although the furnishing of such free bus transportation had never been a contractual requirement of any Labor Agreement covering the work at Hanford Works, and further demanded the payment to their members employed by Plaintiff of isolation pay, as provided for by the terminated Hanford Works Agreement, and refused to recognize the applicability of the Labor Agreements, Plaintiff's Exhibits 2 and 3, to the work of Plaintiff within the Hanford Works Area for the Atomic Energy Commission although said work was being carried on wholly within Benton County, Washington. Although Plaintiff, through its authorized bargaining agent and representative, Associated General Contractors of America, Inc., Spokane Chapter, offered to submit the applicability of



said Labor Agreements, Plaintiff's Exhibits 2 and 3, to the Hanford Works Area and the questions of the furnishing of free bus transportation and of isolation pay for hearing and arbitration in accordance with the grievance machinery, as set forth and established by Article IX of Plaintiff's [139] Exhibit 2 and Article X of Plaintiff's Exhibit 3, the Defendants Teamsters Local No. 839 and Operating Engineers Local No. 370 refused to submit such matters under the grievance machinery, as set forth in said Labor Agreements, disclaimed the applicability of Plaintiff's Exhibits 2 and 3 to the work of the Plaintiff within the Hanford Works Area and on March 22, 1956, upon the discontinuance by Plaintiff of the furnishing of free bus transportation and of isolation pay to the members of the Defendant Local Unions then in the employ of Plaintiff, said Defendant Teamsters Local No. 839 and Defendant Operating Engineers Local No. 370, acting in concert, caused their respective membership to strike the work of Plaintiff under its Contract, Plaintiff's Exhibit 1, with the Atomic Energy Commission and to cease all work thereon or for Plaintiff and on April 5, 1956, caused the work of Plaintiff to be picketed, which strike and refusal to work continued to and until the 6th day of June, 1956.

#### VIII.

That although the Defendants Teamsters Local No. 839 and Operating Engineers Local No. 370 pleaded by way of trial amendment and as an Affirmative Defense that:



“At the time of the commencement of work Plaintiff agreed with the Defendants Local 839 and 370 that said Hanford Contract should apply to said job until completed and although termination notice of said Contract was made on December 29th the terms of said Contract were applied until after March 20, 1956.”

the Court finds with respect to said Affirmative Defense that no part thereof was established by the evidence introduced in this cause and further specifically finds that there was no Agreement made as pleaded and that any statement or statements claimed by witnesses for the Defendants to have been made by Lee E. Knack, Manager of Labor Relations for Plaintiff, at a meeting held in Pasco, Washington, on January 5, 1956, were not made as a contractual commitment on behalf of Plaintiff to any party to this action, [140] or were said statement or statements, if any, in any manner relied upon by the Defendants or their membership.

From the above and foregoing Findings of Fact the Court deduces the following:

### Conclusions of Law

#### I.

That an Order should be entered as a part of the Judgment herein granting the oral Motion, made at the beginning of the trial of this action by counsel for Plaintiff, to strike that portion of the Affirma-



tive Defenses, as pleaded by the Defendants Teamsters Local No. 839 and Operating Engineers Local No. 370, as set forth in the preamble to the Findings of Fact herein.

## II.

That an Order should be entered as a part of the Judgment herein sustaining the oral challenge by counsel for Defendants Joint Council of Teamsters No. 28 and Western Conference of Teamsters to the jurisdiction of this Court under the allegations of the Complaint and the proof adduced upon the Plaintiff's case and granting the oral Motion of said counsel for said Defendants to dismiss this action as to said Defendants for lack of jurisdiction.

## III.

That this Court has jurisdiction of the cause of action asserted by the Plaintiff herein under the provisions of the Labor Management Relations Act of 1947, and more particularly Section 301 thereof, otherwise designated as 29 U.S.C.A., Section 185, and has jurisdiction of the Plaintiff and of the Defendants Teamsters Local No. 839 and Operating Engineers Local No. 370.

## IV.

That the Labor Agreement, Plaintiff's Exhibit 2, was entered into between the Plaintiff, through its agent and representative Associated General Contractors of America, Inc., Spokane Chapter, and the Defendant Teamsters Local No. 839 and [141] was applicable in all of its terms to the members of



said Defendant Union employed by Plaintiff in the performance of its Contract, Plaintiff's Exhibit 1, with the Atomic Energy Commission within Benton County, State of Washington, during the year 1956 and until the completion of Plaintiff's work under said Contract in approximately May of 1957, was a Contract between Plaintiff, as an employer engaged in an industry affecting commerce, and the Defendant Teamsters Local No. 839, as a Labor Organization representing employees in an industry affecting commerce within the purview of Section 301 of the Labor Management Relations Act of 1947 (29 U.S.C.A., Section 185), and was binding upon Defendant Teamsters Local No. 839 and its members.

#### V.

That the Labor Agreement, Plaintiff's Exhibit 3, was entered into between the Plaintiff, through its agent and representative Associated General Contractors of America, Inc., Spokane Chapter, and the Defendant Operating Engineers Local No. 370 and was applicable in all of its terms to the members of said Defendant Union employed by Plaintiff in the performance of its Contract Plaintiff's Exhibit 1, with the Atomic Energy Commission within Benton County, State of Washington, during the year 1956 and until the completion of Plaintiff's work under said Contract in approximately May of 1957; was a Contract between Plaintiff, as an employer engaged in an industry affecting commerce, and the Defendant Operating Engineers Local No. 370, as a Labor Organization representing employees in an



industry affecting commerce within the purview of Section 301 of the Labor Management Relations Act of 1947 (29 U.S.C.A., Section 185), and was binding upon Defendant Operating Engineers Local No. 370 and its members.

## VI.

That by reason of the failure and refusal of the Defendant Teamsters Local No. 839 to abide by and act in accordance with [142] the grievance machinery, as provided for by Plaintiff's Exhibit 2, Article IX, and the failure and refusal of the Defendant Operating Engineers Local No. 370 to abide by and act in accordance with the grievance machinery, as provided for by Plaintiff's Exhibit 3, Article X, and the combined action of said Defendant Unions in causing, approving and acting in furtherance and support of the strike and work stoppage on March 22, 1956, by the members of each Defendant then employed by Plaintiff in the performance of its Contract, Plaintiff's Exhibit 1, with the Atomic Energy Commission, said Defendant Teamsters Local No. 839 was guilty of a breach of Article VII of Plaintiff's Exhibit 2 and Defendant Operating Engineers Local No. 370 was guilty of a breach of Article VIII of Plaintiff's Exhibit 3, and by reason thereof said Defendants became and are liable, jointly and severally, to Plaintiff for such damages as may hereafter be established to have resulted to Plaintiff therefrom upon a hearing to be hereafter fixed by this Court to ascertain the amount thereof.



## VII.

That upon a trial having been had, at a date to be hereafter fixed by the Court, upon the issue of the amount of damages, if any, sustained by the Plaintiff as a result of the breaches of Contract as referred to in paragraph VI of these Conclusions of Law there shall be entered herein Supplemental Findings of Fact and Conclusions of Law with respect to such issue and based thereon and upon the Conclusions of Law hereinbefore set forth a Judgment shall then be entered herein in conformity therewith.

Done in Open Court this 24th day of July, 1957.

/s/ SAM M. DRIVER,  
District Judge.

Receipt of copy acknowledged.

[Endorsed]: Filed July 24, 1957. [143]

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[Title of District Court and Cause.]

SUPPLEMENTAL FINDINGS OF FACT AND  
CONCLUSIONS OF LAW UPON THE  
ISSUE OF DAMAGES

This Cause having come on regularly for hearing and trial on the 24th day of February, 1958, before the undersigned Judge of the above-entitled Court, sitting at Spokane within said District pursuant to stipulation of the parties hereto, through



their respective counsel of record, upon the issue of damages, if any, to be awarded to the Plaintiff and against the Defendants in accordance with the Findings of Fact and Conclusions of Law upon the issue of liability as heretofore entered herein on the 24th day of July, 1957, and the Plaintiff Morrison-Knudsen Company, Inc., a corporation, having appeared at said hearing by representatives and witnesses and having been represented by Gerald DeGarmo and Harold J. Hunsaker of Allen, DeGarmo & Leedy and Dorsey & Haight, its counsel of record, the Defendant International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local No. 839, (which will hereafter for sake of brevity be referred to merely as Teamsters Local No. 839) having appeared by representatives and witnesses and having [144] been represented by Samuel B. Bassett and Stephen V. Carey of Bassett, Davies & Roberts, its counsel of record, the Defendant International Union of Operating Engineers, Local No. 370, (which will hereafter for sake of brevity be referred to as Operating Engineers Local No. 370) having appeared by representatives and witnesses and having been represented by R. Max Etter, its counsel of record, and the Court having heard and considered the evidence and the argument of counsel at the conclusion thereof and having heretofore and on February 27, 1958, announced its oral decision herein upon the issue of damages and being fully advised in the premises now makes the following:



## Supplemental Findings of Fact

## I.

That by reason and as a direct and proximate result of the strike and refusal to work of the Defendants Teamsters Local No. 839 and Operating Engineers Local No. 370 in breach of their respective Contracts with Plaintiff, as set forth in the Findings of Fact entered herein on July 24, 1957, the Plaintiff suffered and sustained loss, costs and damages in the following amounts and with respect to the following items, to wit:

## Item

1	Overhead Salaries During Strike Period .....	13,389.00
2	Office Rent, Furnishings and Engineering Equipment .....	1,168.38
3	Transportation to Protect Property During Strike .....	344.00
4	Director of Labor Relations Costs..	537.75
5	Telephone Expense .....	563.28
6	Legal Expense .....	750.00
7	Re-employment Costs After Strike..	896.01
8	Equipment Rentals .....	18,938.82
10	Interest on Invested Capital.....	1,624.22
12	General Administrative Expense...	17,331.30
13	Extra Strength Concrete.....	675.75
14	Wage Increase After January 1, 1957 .....	2,284.49
15	Extended Time Maintaining General Electric Company Offices.....	478.59
16	Efficiency Loss for Labor and Extra Cost Materials .....	75,933.89



17 Status Quo Transportation and Iso- lation Pay .....	6,432.64
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Total Direct Costs and Expense..	\$141,348.12
	\$141,348.12

and that Plaintiff is further en-  
titled to an allowance upon said di-  
rect cost, expense and damage Items  
1, 2, 8, 10, 12, 15 and 17, totaling  
\$59,362.95 of a reasonable markup or  
profit of 10% or..... 5,936.29

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making a total of.....\$147,284.41

From the above and foregoing Supplemental  
Finding of Fact the Court deduces the following:

Supplemental Conclusion of Law

I.

That the Plaintiff Morrison-Knudsen Company,  
Inc., a corporation, is entitled to the entry of a  
Judgment herein against the Defendants Teamsters  
Local No. 839 and Operating Engineers Local No.  
370, jointly and severally, for the sum of \$147,-  
284.41, together with interest thereon at the rate of  
6% per annum from the date of entry of Judge-  
ment herein until paid, and together with Plain-  
tiff's costs and disbursements herein to be taxed and  
allowed in the manner provided by law.

Done in Open Court this 14th day of April, 1958.

/s/ SAM M. DRIVER,  
District Judge.

[Endorsed]: Filed April 14, 1958. [146]



[Title of District Court and Cause.]

ORDER UPON MOTION TO STRIKE AFFIRMATIVE DEFENSES, MOTION TO DISMISS AND JUDGMENT

This Cause having come regularly on for trial on the 10th day of June, 1957, upon the issue of liability, and on the 24th day of February, 1958, upon the issue of damages, before the undersigned Judge of the above-entitled Court, sitting at Spokane within said District pursuant to the written Stipulation of the parties hereto, through their respective counsel of record, that the cause be "transferred for trial from Yakima to Spokane" and that said cause be first "assigned for hearing to determine the question of liability only, and if liability is found in favor of the Plaintiff it shall be continued and assigned for hearing at a later date for determination of damages," which Stipulation of the parties was approved by the Court and Plaintiff Morrison-Knudsen Company, Inc., a corporation, having appeared at said separate hearings by representatives and witnesses and having been represented by Gerald DeGarmo and Harold J. Hunsaker of Allen, DeGarmo & Leedy and Dorsey & Haight, its counsel of records, [147] the Defendant International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local No. 839, having appeared at the hearing upon the issue of liability by Stephen V. Carey of Bassett, Vance & Davies and at the hearing upon



the issue of damages by Samuel B. Bassett and Stephen V. Carey of Bassett, Davies & Roberts, its counsel of record, the Defendant International Union of Operating Engineers, Local No. 370, having appeared at said hearings by representatives and witnesses and having been represented by R. Max Etter, its counsel of record, and the Defendants Joint Council of Teamsters No. 28 and Western Conference of Teamsters having appeared by Stephen V. Carey of Bassett, Vance & Davies, their counsel of record, and the Court during the hearing upon the issue of liability having heard and orally granted the Motion of the Plaintiff to strike from the Affirmative Defenses of the Defendants certain allegations as hereinafter more particularly set forth, and having heard and orally granted the Motion of counsel for Joint Council of Teamsters No. 28 and Western Conference of Teamsters to dismiss this action as to said Defendants for lack of jurisdiction, and the Court having heretofore and on the 24th day of July, 1957, made and entered its Findings of Fact and Conclusions of Law upon the issue of liability and having heretofore made and entered its Supplemental Findings of Fact and Conclusions of Law upon the issue of damages, and deeming itself fully advised in the premises:

Now, Therefore, It Is Hereby Ordered that the oral Motion of counsel for the Plaintiff Morrison-Knudsen Company, Inc., made at the beginning of the trial of this action upon the issue of liability



to strike from the Affirmative Defenses as pleaded by the Defendants in their respective Answers to the Amended Complaint of Plaintiff the portions thereof reading as follows:

“Said area, although in part within the exterior boundaries of Benton County, has always been regarded by labor unions and by contractors as segregated from the remainder [148] of Benton County for the purpose of negotiating labor agreements and was so regarded when the labor agreements described in the plaintiff’s original and amended complaints were being negotiated. For many years prior to and during the year 1955 all contractors, contracting with the United States Atomic Energy Commission for the performance of construction work in said area, have negotiated their labor agreements with labor unions, including the defendant Local 839 (Local No. 370), through their bargaining representative known as Hanford Contractors Negotiating Committee; and all of such contractors, who at the same time were engaged in performing construction work in Benton County and adjoining counties but not within said area, negotiated their labor agreements with labor organizations, including Local 839 (Local No. 370), through another and different bargaining representative known as Associated General Contractors of America, Inc., Spokane Chapter.

“The agreement dated the 19th day of December, 1955, by and between Associated General Contractors of America, Inc., Spokane Chapter, and Team-



sters Unions Locals 690, 148, 556, 551 and 839 (attached to plaintiff's original complaint as Exhibit 'A') does not apply and was not intended to apply to construction work to be performed by plaintiff for Atomic Energy Commission under the contract described in paragraph IV of the amended complaint."

"The agreement dated the 24th day of December, 1955, by and between Associated General Contractors of America, Inc., Spokane Chapter, and Local No. 370 Engineers Union (attached to plaintiff's original complaint as Exhibit 'B') does not apply, and was not intended to apply, to construction work to be performed by plaintiff for Atomic Energy Commission under the contract described in Paragraph IV of the amended complaint."

be and the same is hereby granted in accordance with the oral Order of the Court as made at the time of the hearing upon said Motion.

It Is Further Ordered that the oral Motion of counsel for the Defendants Joint Council of Teamsters No. 28 and Western Conference of Teamsters as made during the course of the hearing upon the issue of liability herein to dismiss this action as to said Defendants for lack of jurisdiction of this Court under the allegations of the Amended Complaint of the [149] Plaintiff and the proof adduced in support thereof be and the same is hereby granted in confirmation of the oral Order granting



said Motion as made at the conclusion of the hearing thereon.

It Is Further Ordered, Adjudged and Decreed that pursuant to the Order above this action be and the same is hereby dismissed as to the Defendants Joint Council of Teamsters No. 28 and Western Conference of Teamsters and that said Defendants have and recover their costs and disbursements herein to be taxed against the Plaintiff in the manner as provided by law.

It Is Further Ordered, Adjudged and Decreed that Morrison-Knudsen Company, Inc., a corporation, Plaintiff herein, is hereby granted Judgment against International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local No. 839, and International Union of Operating Engineers, Local No. 370, Defendants herein, jointly and severally, in the amount of \$147,284.41, together with interest thereon at the rate of 6% per annum from the date of entry of this Judgment until paid, and together with the costs and disbursements of Plaintiff to be taxed against said Defendants in the manner as provided by law.

Done in Open Court this 14th day of April, 1958.

/s/ SAM M. DRIVER,  
District Judge.

[Endorsed]: Filed April 14, 1958. [150]



[Title of District Court and Cause.]

DEFENDANTS' MOTION FOR  
ADDITIONAL FINDINGS

The defendants International Brotherhood of Teamsters, Chauffers, Warehousemen and Helpers of America, Local No. 839, and International Union of Operating Engineers, Local No. 370, move that the court make and enter their Proposed Additional Findings of Fact I to XXVIII, filed herewith.

BASSETT, DAVIES &  
ROBERTS,

/s/ STEPHEN V. CAREY,

Attorneys for Defendants, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local No. 839;

/s/ R. MAX ETTER,

Attorney for Defendant, International Union of Operating Engineers, Local No. 370. [151]

[Title of District Court and Cause.]

DEFENDANTS' PROPOSED ADDITIONAL  
FINDINGS OF FACT

I.

The contract described in paragraph IV of the plaintiff's amended complaint between the plain-



tiff and United States Atomic Energy Commission, dated November 25, 1955, covered construction work to be performed by the plaintiff exclusively within the area now known as "Hanford Atomic Products Operation."

## II.

On February 18, 1943, Henry L. Stimson, the then Secretary of War, addressed a letter to the then Attorney General of the United States stating that

"It is necessary and advantageous to the interest of the United States that certain lands situated in Benton County, State of Washington, be acquired for use in connection with the establishment of the Gable Project \* \* \* The aforementioned lands are to be utilized for the establishment of a military reservation, and for other military uses incident thereto, and the utmost haste in expediting this project is vital to the successful prosecution of the war. It is requested that pursuant to the provisions of the Act of Congress approved March 27, 1942, (Public Law 507-77th Congress) you procure an order of the court granting immediate possession of the aforesaid lands." [152]

## III.

In compliance with the request of the Secretary of War, the Attorney General of the United States, through the United States District Attorney for the Eastern District of Washington, on February 23, 1943, caused a petition for condemnation to be filed



in the above-entitled Court, entitled: "No. 128—United States of America, Petitioner, vs. Clements P. Alberts, Defendant," which petition described the lands sought to be acquired by the United States for the purposes described by the Secretary of War. Said lands were identified as Area "A" in Benton County, Washington, containing 176,323 acres, more or less, and Area "D" in Benton County, Washington, containing 17,510 acres, more or less.

#### IV.

Upon the filing of the described petition for condemnation the court, on February 23, 1943, entered its order granting the United States of America, the petitioner, the right of immediate possession of the described lands upon a proper showing that the said lands were being acquired in time of war for military, naval, or other war purposes and that immediate possession thereof was required in order that the same might forthwith be occupied, used and improved for the purposes described in the condemnation petition.

#### V.

On April 12, 1943, the Secretary of War addressed a letter to the Attorney General of the United States referring to the condemnation proceeding then pending and stating, in part:

"It has been administratively determined to be advantageous to the interest of the United States to



amend the petition in condemnation and order of possession in order to correctly and fully describe all of the lands to be affected by this proceeding, and to further amend said petition and order to provide for the acquisition of certain existing easements for railroads in the lands involved.

“It is requested, therefore, that you take the necessary action to amend the petition and order of possession [153] to include all of the lands described in the attached Exhibit ‘A’ as Areas ‘A,’ ‘D’ and ‘E’ \* \* \*.”

In that letter the lands to be acquired were described as “Hanford Engineering Works.”

## VI.

As requested by the Secretary of War, an amended petition for condemnation was filed on April 22, 1943, describing three areas to be acquired and designated as “A,” “D,” and “E,” Area “A” containing 182,723 acres, more or less, in Benton County, Washington; Area “D” containing 17,000 acres, more or less, in Benton County, Washington, and Area “E” containing 6,400 acres, more or less, in Benton, Yakima and Grant Counties, Washington, aggregating 206,123 acres, more or less.

## VII.

Upon the filing of the said amended petition the court, on April 22, 1943, entered its order granting



the United States of America the right of immediate possession of the described lands upon a proper showing that the same were being acquired in time of war for military, naval, or other war purposes and that immediate possession was required in order that the same be devoted to the purposes described in the amended petition, namely, for "the establishment of the Hanford Engineering Project, for a military reservation and for other military uses incident thereto."

### VIII.

Upon the entry of the said orders of February 23, 1943 and April 22, 1943, the United States, through the War Department, took possession of all of the described lands and thereafter acquired additional lands so that ultimately the area included in excess of 400,000 acres, the greater portion being within the exterior limits of Benton County.

### IX.

Following the passage of the Atomic Energy Act of 1946 [154] the President, by Executive Order 9816, dated December 31, 1946, transferred all of the lands and property then known as "Manhattan Engineering District, War Department," to the Atomic Energy Commission which at all times since has possessed and operated the same for the production of fissionable material, as provided by the Atomic Energy Act of 1946, as amended.



## X.

The area designated in the condemnation petitions as "Cable Project" and "Hanford Engineering Works," and designated as "Manhattan Engineering District, War Department" at the time of its transfer to the Atomic Energy Commission is the same area referred to in the plaintiff's amended complaint as "Hanford Atomic Products Operation," and hereafter in these findings will be referred to as the Hanford Area or Hanford Atomic Products Operation.

## XI.

Immediately after the War Department took possession of the described lands it entered into a contract with Du Pont De Nemours & Company for the construction and operation of a plant, the performance of architect-engineer services and other work and services all as directed by the United States government, and pursuant to such contract and directions fissionable material was produced, which was used for war purposes, and after the transfer of the area to the Atomic Energy Commission it entered into a similar contract with the General Electric Company for the construction of additional plants, the operation of facilities, the performance of architect-engineer services, and for other work and services all as directed by the Atomic Energy Commission, and pursuant to such contract and directions fissionable materials were produced in accordance with the Atomic Energy



Act of 1946 and as amended by the Atomic Energy Act of 1954.

## XII.

The contracts of the Du Pont and General Electric Company [155] covered not only the construction and operation of facilities for the manufacture of fissionable materials but also the performance of many related engineering, architectural and research services. Those contracts also included the construction, management and operation of extensive housing and business facilities required to meet the needs of the employees, together with all necessary municipal services. The Federal government acquired the lands by purchase or condemnation and has always used the same for the purposes and objects of constructing and operating a plant for the production of fissionable materials. While the Federal government did not elect to take exclusive jurisdiction of the area, it has controlled all ingress and egress to and from the area and only those with official business and appropriate identification and security clearance have been permitted in the area.

## XIII.

From time to time from February 23, 1943, as the United States acquired lands in Benton County and adjoining counties for use as the "Hanford Atomic Project Operation" all lands and facilities, the ownership of which became vested in the Federal government, have been immune from taxation



by the State of Washington and its political subdivisions, including the County of Benton.

#### XIV.

After the Hanford Area had been acquired by the War Department for purposes of national defense and after its transfer to Atomic Energy Commission, by reason of special arrangements between state authorities, Federal authorities and contractors doing work within the area, compensation to injured workmen and their dependents was made under a plan similar to the terms and provisions of the Washington Workmen's Compensation Act, but that plan was administered by special administrative procedures applicable to that area only and not applicable to Benton County or to the State generally. This plan for compensating injured workmen and their dependents was made pursuant to Chapter 85 of Laws [156] of Washington, 1943, as amended by Chapter 144, Laws of Washington, 1951.

#### XV.

After the acquisition of the Hanford Area and during its operation, as stated in the preceding Findings I to XIV inclusive, the Criminal Code as enacted by the State of Washington became applicable thereto by reason of the Federal Assimilated Crimes Act of 1940 (54 Stat. 234) as re-enacted in 1948 and now appearing as Federal Revised Criminal Code, 18 U.S.C. Section 13.



## XVI.

On September 1, 1950, a contract was entered into between the Spokane Chapter of the Associated General Contractors and Engineers Local 370 and Teamsters Local 839 (Defendants' Exhibit 4) covering work to be performed during the years 1950-1955 and it remained in effect until superseded as of January 1, 1955, by the two contracts described in Finding XX (Plaintiff's Exhibits 2 and 3). This contract applied to construction work performed in Benton County and adjoining counties outside the limits of the Hanford Area and was never applied to construction work within that area.

## XVII.

On September 29, 1952, V. K. O'Connor, John Molitor, Edmund P. Erwen, F. M. Cochrane, F. S. Garrett and J. O. Murray organized as "Employer Negotiating Committee," and also known as "Hanford Contractors Negotiating Committee," entered into a contract with Pasco-Kennewick Building Trades Council providing in detail for wages, hours and working conditions applicable to construction work to be performed in the Hanford Area. This contract (Plaintiff's Exhibit 6) provided that it should remain in force until January 1, 1954, and from year to year thereafter until terminated on notice. In addition to prescribed hourly wage rates it provided for an allowance for "isolation pay" originally fixed at \$1.50 per day and increased from time to time until [157] in the latter part of 1955 it had become \$2.62½ per day. Although this con-



tract as originally executed did not provide for bus transportation to be supplied by contractors to their workmen employed in remote portions of the Hanford Area, the fact is that it was modified so that in actual operation bus transportation was furnished by the employing contractors. This contract as executed on September 29, 1952, between Employer Negotiating Committee and Pasco-Kennewick Building Trades Council was accepted by both Operating Engineers Local No. 370 and Teamsters Local No. 839. This contract applied exclusively within the Hanford Area, whereas the contract described in the preceding Finding XV contemporaneously in effect applied to work performed in those portions of Benton County and adjoining counties not included within the Hanford Area. Kenneth M. McCaffree was not a member of the Employer Negotiating Committee, and there is no evidence from which the court can find that he at any time had authority to alter or modify or terminate the contract as originally executed by that Committee.

### XVIII

On November 25, 1955, a contract between the plaintiff Morrison-Knudsen Company, Inc., and Atomic Energy Commission was entered into for the construction of certain facilities in the Hanford Area for a lump sum of \$1,869,580.00. This contract (Plaintiff's Exhibit 1) required the contractor to commence work within five calendar days after receipt of written notice to proceed and the plaintiff



did commence work on November 28, 1955. This contract contained a provision entitled "32. Prevailing Wage Rates and Allowances," and reading, in part, as follows:

"During the life of the Hanford Works agreement the contractor agrees to pay laborers and mechanics engaged in the work hereunder at Hanford Works the scale of wages and allowances prevailing at Hanford Works, including all terms of any modification thereof, as determined by the Commission \* \* \*."

From November 28, 1955, until on or about March 22, 1956, plaintiff [158] did pay isolation pay and did furnish bus transportation to laborers and mechanics according to the terms and conditions of the Hanford Area contract as originally negotiated and thereafter modified.

## XIX

After the plaintiff commenced work under its contract with Atomic Energy Commission dated November 25, 1955 (Plaintiff's Exhibit 1), and before the execution of the two contracts (Plaintiff's Exhibits 2 and 3), described in the next succeeding finding, for the alleged breaches of which the plaintiff is claiming damages in this action, proposals were made to the defendant Unions by Kenneth M. McCaffree, purporting to act as Executive Secretary of the Hanford Contractors Negotiating Committee, for the elimination of isolation pay and discontinuance of bus transportation, but the de-



fendant Unions declined to acquiesce in such proposals and maintained that isolation pay should continue to be paid and bus transportation should continue to be furnished. The first of these proposals was made by a letter dated December 15, 1955, from Kenneth M. McCaffree (Defendants' Exhibit 12) and thereafter and prior to the 10th day of March, 1956, said McCaffree made other proposals of like import. There is no evidence from which the court can find that in making such proposals said McCaffree had any authority to alter or modify the contract of September 29, 1952, as originally executed by Employers Negotiating Committee and Pasco-Kennewick Building Trades Council and accepted by the defendant local unions.

## XX.

On December 19, 1955, a contract between Associated General Contractors of America, Inc., Spokane Chapter, and five Teamster locals, including the defendant Pasco Teamster Local No. 839, was entered into (Plaintiff's Exhibit 2). On December 24, 1955, a similar contract was entered into between Associated General Contractors, [159] Inc., Spokane Chapter, and the defendant Engineers Local 370 (Plaintiff's Exhibit 3). These two contracts, being the contracts plaintiff now claims were breached, by their terms took effect on January 1, 1956, and superseded the prior contract dated September 1, 1950, described in preceding Finding No. XVI. The contract of December 19, 1955, between Associated



General Contractors and Teamsters Local 839 was not signed by the defendant Engineers Local 370. The contract of December 24, 1955, between Associated General Contractors and Engineers Local 370 was not signed by Teamsters Local 839. The plaintiff Morrison-Knudsen Company, Inc., did not sign either of these two contracts. The contract dated December 19, 1955, between Associated General Contractors and Teamsters Local 839 contained a provision reading:

“Article IX—Settlement of Disputes and Grievances

“Section 1. If a dispute involving the application or interpretation of the Agreement shall arise (other than jurisdictional disputes) written notice of the same shall be promptly (in no event later than ten (10) days) given by the offended party (either Contractor or the affected Union) to the other. If the two (2) parties are unable to adjust the same within forty-eight (48) hours, the dispute shall be settled by the following procedure \* \* \*” (Plaintiff’s Exhibit 2, page 11).

The contract dated December 24, 1955, between Associated General Contractors of America, Inc., Spokane Chapter, and Operating Engineers Local No. 370 contained an identical provision relative to procedures for the settlement of disputes and grievances (Plaintiff’s Exhibit 3, page 9).

There is no evidence from which the court can find that when the dispute arose between the plain-



tiff and the defendant Unions the plaintiff, by written notice or otherwise, invoked the settlement procedures provided in both of said contracts.

## XXI.

After the plaintiff had commenced work under its contract of November 25, 1955, with the Atomic Energy Commission (Plaintiff's [160] Exhibit 1) and after the execution of the labor contracts of December 19, 1955 and December 24, 1955 (Plaintiff's Exhibits 2 and 3), Kenneth M. McCaffree, purporting to act for and on behalf of Hanford Contractors Negotiating Committee, sent a letter dated December 29, 1955 (Defendants' Exhibit 16), to Teamsters Local 839 and Engineers Local 370, stating that Hanford Contractors Negotiating Committee was exercising the right to terminate the Hanford agreement as of December 31, 1955, but that letter further stated that the Hanford Contractors would not stop work as of January 1, 1956, but would maintain wages and conditions in effect after December 31, 1955, until a new agreement could be completed and until then the wage policy would remain unchanged. At the time this letter was transmitted to the two defendant Locals the plaintiff Morrison-Knudsen had been performing its contract with the Atomic Energy Commission in the Hanford Area since the preceding November 28, 1955, in conformity with its contract, which required it to maintain wages and working conditions according to the terms of the Hanford agreement dated September 29, 1952 (Plaintiff's Exhibit 6).



There is no evidence from which the court can ascertain by what authority said McCaffree assumed to act for Hanford Contractors Negotiating Committee (otherwise known as Employer Negotiating Committee) in giving notice of termination of the Hanford agreement of September 29, 1952, as of December 31, 1955, and there is no evidence that said McCaffree had any authority whatever to act for or on behalf of the plaintiff Morrison-Knudsen Company, Inc., in the alteration or modification of the wages, hours and working conditions under which the plaintiff was then executing its contract in the Hanford Area with the Atomic Energy Commission.

## XXII.

Throughout the months of January, 1956 and February, 1956 and until on or about March 10, 1956, the Hanford Contractors Negotiating Committee continued to negotiate with union representatives, [161] including the two defendant Locals, Teamsters Local 839 and Engineers Local 370, for a new contract to supersede the Hanford Area contract of September 29, 1952, and continued such negotiations although the contracts between the Associated General Contractors and the Unions, dated December 19, 1955 and December 24, 1955 (Plaintiff's Exhibits 2 and 3) had been in force since the preceding January 1, 1956. During that period of negotiation no claim was ever made by the Associated General Contractors or by the plaintiff Morrison-Knudsen Company, Inc., that the contracts of December 19, 1955 and December 24,



1955, had any application to work which the plaintiff since November 28, 1955, had been performing and was then performing in the Hanford Area.

### XXIII.

On March 8, 1956, Kenneth M. McCaffree, purporting to act as Executive Secretary of Hanford Contractors Negotiating Committee, addressed a letter to Eastern Washington Building Chapter and Spokane Chapter of Associated General Contractors stating that effective March 9, 1956, "bargaining rights" held by Hanford Contractors Negotiating Committee were assigned to Associated General Contractors, Spokane Chapter. There is no evidence from which the court can find by what authority, if any, said McCaffree in writing that letter acted for or with the approval of the Hanford Contractors Negotiating Committee (otherwise known as Employer Negotiating Committee) and there is no evidence from which the court can find that, even though said McCaffree had authority from that Committee the claimed assignment of "bargaining rights" operated retroactively to make the union labor contracts of December 19, 1955 and December 24, 1955 (Plaintiff's Exhibits 2 and 3), applicable to the work then being performed by the plaintiff for the Atomic Energy Commission under its contract of November 25, 1955.

### XXIV

On the morning of March 22, 1956, the plaintiff's workmen [162] reported for work, as they had



customarily been doing since the plaintiff commenced the performance of its contract on the preceding November 28, 1955, but were unable to go to work because the plaintiff then failed and refused to have the customary bus transportation available. Because of the continued refusal of the plaintiff to pay isolation pay and furnish bus transportation the work stoppage of which the plaintiff complains in this action then began and continued seventy-six days until June 6, 1956, when the plaintiff resumed the payment of isolation pay and the furnishing of bus transportation.

## XXV.

There is no evidence from which the court can find that at any time prior to March 22, 1956, the plaintiff ever accepted or agreed to be bound by either of the described labor contracts dated December 19, 1955 and December 24, 1955 (Plaintiff's Exhibits 2 and 3).

## XXVI

On April 27, 1956, the law firm of Allen, DeGarmo & Leedy by Gerald DeGarmo, as attorneys for the plaintiff, addressed a letter to Teamsters Local 839 and Operating Engineers Local 370, referring to the work stoppage which had then been in effect for thirty-six days, since the preceding March 22, 1956 (Exhibit C referred to in the plaintiff's original and amended complaints and a photostatic copy in evidence as defendants' Exhibit 50). That letter, after referring to the two labor contracts, which the plaintiff now claims were breached



by the defendant Local Unions, states, in part, as follows:

“Morrison-Knudsen Company, Inc., as a member of the Associated General Contractors of America, Inc., Spokane Chapter, has at all times since January 1, 1956, recognized said Agreements heretofore mentioned as being in force and effect with your organizations and your members, applicable to the work being performed by it at the Hanford Atomic Products Operation \* \* \*.”

Since a date prior to January 1, 1956, when the plaintiff [163] commenced the performance of its contract of November 25, 1955, with the Atomic Energy Commission, Lee Knack was Director of Labor Relations for the plaintiff and as such it was his function to supervise the execution of labor contracts between his company and various labor unions whose members were employed by the plaintiff. Russ Madsen was plaintiff's assistant district manager at its Seattle office, which office had supervision over the performance of the work being performed by plaintiff for Atomic Energy Commission. Both Lee Knack and Russ Madsen collaborated with plaintiff's attorney Gerald DeGarmo in writing the quoted letter, and it was also approved by Carroll F. Zapp, an officer of the plaintiff at its home office at Boise, Idaho. Although the work stoppage had been in progress since the preceding March 22, 1956, that letter of April 27, 1956, was the first time the plaintiff, or anyone acting for it, ever made any claim that the labor contracts of



December 19, 1955, and December 24, 1955 (Plaintiff's Exhibits 2 and 3), had any application to the work the plaintiff since November 28, 1955, had been performing in the Hanford Area.

## XXVII.

The court finds that at all times since the Federal government first acquired the lands now constituting the Hanford Area (otherwise known as Hanford Atomic Products Operation) it has been and now is a Federal enclave acquired and always used for purposes of national defense and for the production of fissionable material, as provided by the Atomic Energy Act of 1946 as amended, and incidental activities. The labor contracts of December 19, 1955 and December 24, 1955 (Exhibits 2 and 3), by their terms are not applicable and were not intended by the parties thereto to be applicable to construction work to be performed within the limits of that area.

## XXVIII.

The court further finds that if it be held that the said [164] contracts of December 19, 1955 and December 24, 1955, were applicable to the Hanford Area as now claimed by plaintiff the damages sustained by the plaintiff by reason of the work stoppage from March 22, 1956, to June 6, 1956, did not exceed the sum of \$. . . . .



## Conclusions of Law

## I.

The court concludes, as a matter of law, that the plaintiff has failed to establish any cause of action against the defendant Operating Engineers Local 370 or against the defendant Teamsters Local 839, and that this action should be dismissed as to each of said defendants with costs taxed against the plaintiff.

Done in Open Court this .. day of ....., 1958.

.....,

U. S. District Judge.

Considered and rejected April 17, 1958.

/s/ SAM M. DRIVER,

U. S. District Judge.

Receipt of copy acknowledged.

[Endorsed]: Filed April 15, 1958. [165]

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[Title of District Court and Cause.]

ORDER DENYING MOTION TO MAKE AND  
ENTER DEFENDANTS' PROPOSED  
FINDINGS OF FACT

The above-named defendants, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America Local No. 839, and International Union of Operating Engineers, Local



No. 370, have filed with the Clerk of this Court their Proposed Additional Findings of Fact, and there-with a motion that the court make and enter the same. The above-entitled cause is for damages for breach of contract, and the court separately tried the issues of liability and damages. Pursuant to trial on the first issue, the court decided that said defendants were liable to plaintiff for breach of contract and, on July 24, 1957, entered findings of fact and conclusions of law on that basis. Subsequently the court tried the issue of damages, determined the amount thereof, and on the 14th day of April, 1958, entered supplemental findings of fact and conclusions of law on the issue of damages. On the 15th day of April, said defendants filed their proposed additional findings of fact hereinabove mentioned. They do not in any way pertain to the issue of damages, but relate solely to the issue of liability. They are intended to and would provide the factual basis for the legal conclusion that the plaintiff is not entitled to recover against the said defendants, and would [166] necessitate the entry of a judgment dismissing the action.

It Is Now, Therefore, Ordered that the said defendants' motion that the court make and enter their additional proposed findings of fact, is hereby denied.

Dated this 21st day of April, 1958.

/s/ SAM M. DRIVER,

United States District Judge.

[Endorsed]: Filed April 21, 1958. [167]



[Title of District Court and Cause.]

DEFENDANTS' MOTION FOR ADDITIONAL  
FINDINGS AND MOTION FOR AMEND-  
MENT OF JUDGMENT

I.

The defendants International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local 839, and International Union of Operating Engineers, Local 370, severally move that the court make and enter their proposed Additional Findings of Fact I to XXVIII, inclusive, served on the plaintiff on March 26, 1958, and filed by the Clerk on April 15, 1958.

II.

The said defendants severally move that the judgment entered herein on April 14, 1958, be altered and amended by striking therefrom the provision that the plaintiff have judgment against the defendants "jointly and severally, for the sum of \$147,-284.71" for the reason that the evidence fails to establish any joint liability of the defendants to the plaintiff in the amount stated or in any amount whatsoever.

BASSETT, DAVIES &  
ROBERTS,

/s/ STEPHEN V. CAREY,  
Attorneys for Teamsters  
Local 839;



/s/ R. MAX ETTER,

Attorney for Operating  
Engineers Local 370.

Receipt of copy acknowledged.

[Endorsed]: Filed April 22, 1958. [168]

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[Title of District Court and Cause.]

ORDER UPON MOTIONS FOR ADDITIONAL  
OR SUPPLEMENTAL FINDINGS AND  
CONCLUSIONS, AND AMENDMENT OF  
JUDGMENT AND SUPPLEMENTAL  
FINDINGS OF FACT, CONCLUSIONS OF  
LAW, AND JUDGMENT

This Cause having come regularly on for hearing on the 8th day of May, 1958, before the undersigned Judge of the above-entitled Court upon the Plaintiff's Motion for Amendment of Supplemental Findings of Fact and Conclusions of Law Upon Issue of Damages and Judgment and the Defendants' Motion for Additional Findings and Motion for Amendment of Judgment and the Plaintiff and Defendants having appeared by counsel of record and submitted argument in support of the respective Motions, and the Court having heard the same and having considered the matter, and deeming it self fully advised in the premises:

Now, Therefore, It Is Hereby Ordered that all Motions of the Plaintiff and Defendants herein directed against the Findings of Fact and Conclusions of Law Upon Issue of Liability, as entered



herein July 24, 1957, and against the Supplemental Findings of Fact and Conclusions of Law Upon the Issue of Damages and Judgment, as entered herein April 14, 1958, be and the same are hereby denied, except

It Is Hereby Ordered, Adjudged and Decreed that the portion of paragraph VI of the conclusions of Law upon issue of liability entered herein July 24, 1957, reading: [172]

“and by reason thereof said defendants became and are liable jointly and severally to plaintiff for such damages as may hereinafter be established to have resulted to plaintiff therefrom upon a hearing to be hereinafter fixed by this Court to ascertain the amount thereof.”

be, and the same is hereby amended to read as follows:

“and by reason thereof each of said defendants became and are liable to plaintiff for such damages as may hereinafter be established to have resulted to plaintiff therefrom upon a hearing to be hereinafter fixed by this Court to ascertain the amount thereof.”

It Is Further Ordered, Adjudged and Decreed that the Supplemental Conclusions of Law as entered herein April 14, 1958, be, and the same are hereby amended to read as follows:

“I.

“That the plaintiff, Morrison-Knudsen Company, Inc., a corporation, is entitled to the entry of a



judgment herein against each of defendants, Teamsters Local No. 839, and Operating Engineers Local No. 370, for the sum of \$147,284.41, together with interest thereon at the rate of 6% per annum from the date of entry of judgment herein until paid, together with plaintiff's costs and disbursements herein to be taxed and allowed in the manner provided by law. Said judgment shall provide that the satisfaction of said judgment against either of said defendants shall work and operate as an automatic pro tanto satisfaction of the judgment against the other defendant, to the end that plaintiff shall in no event collect or receive from said defendants, either individually or jointly, more than the total amount of the judgment, interest, and costs as found against each defendant."

It Is Further Ordered, Adjudged and Decreed that the last paragraph of the Judgment entered herein April 14, 1958, be, and the same is hereby amended and changed to read as follows:

"It Is Further Ordered, Adjudged and Decreed, that Morrison-Knudsen Company, Inc., a corporation, plaintiff herein, is hereby granted judgment against each of said defendants, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local No. 839, and International Union of Operating Engineers, Local No. 370, in the sum of \$147,284.41, together with interest thereon at the rate of 6% per annum from the date of entry of this judgment until paid, together with the costs and disbursements of plaintiff



to be taxed against each of said defendants in the manner as provided by law. It Is Further Ordered that the satisfaction of said judgment against either defendant shall automatically operate as a pro tanto satisfaction of the judgment against the other defendant, to the end that plaintiff shall in no event collect from said defendants, [173] either individually or jointly, more than the total amount of the judgment, interest, and costs as aforesaid.

Done in Open Court this 8th day of May, 1958.

/s/ SAM M. DRIVER,

United States District Judge.

[Endorsed]: Filed May 8, 1958. [174]

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[Title of District Court and Cause.]

### NOTICE OF APPEAL

Notice is hereby given that International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local No. 839, and International Union of Operating Engineers, Local No. 370, defendants above named, hereby jointly appeal, and each of them separately and severally appeals, to the United States Court of Appeals for the Ninth Circuit from the final judgment entered in this action on April 14, 1958, as amended by the order of the said District Court entered on May 8, 1958, awarding the plaintiff, Morrison-Knudsen Company, Inc., a corporation, damages against them



in the amount of \$147,284.41, together with interest and taxable costs.

The said defendants likewise appeal from that certain order entered April 21, 1958, denying said defendants' motion for the entry of their proposed Findings of Fact, and from that certain order entered on the 8th day of May, 1958, denying the motion of said defendants to amend the judgment as entered on April 14, 1958. [175]

INTERNATIONAL BROTHERHOOD OF  
TEAMSTERS, CHAUFFEURS, WARE-  
HOUSEMEN AND HELPERS OF AMER-  
ICA, LOCAL No. 839,

BASSETT, DAVIES &  
ROBERTS,

By /s/ STEPHEN V. CAREY,  
Its Attorneys.

INTERNATIONAL UNION OF OPERATING  
ENGINEERS, LOCAL No. 370,

By /s/ R. MAX ETTER,  
Its Attorney,

By /s/ ARTHUR A. ROSSMAN,  
Its Business Manager.

[Endorsed]: Filed May 12, 1958. [176]



[Title of District Court and Cause.]

### APPEAL BOND

Know All Men by These Presents:

That we, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local No. 839, and International Union of Operating Engineers, Local No. 370, as principals, and Fidelity & Deposit Company of Maryland, a corporation, duly authorized to do business in the State of Washington, as surety, are held and firmly bound unto Morrison-Knudsen Company, Inc., a corporation, the plaintiff above-named, in the full sum of Two Hundred Fifty Dollars (\$250.00), for the payment of which sum well and truly to be made, we bind ourselves, our successors and assigns, jointly and severally, firmly by these presents.

Dated this 9th day of May, 1958.

The condition of this obligation is such, that whereas, the above-named International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local No. 839, and International Union of Operating Engineers, Local No. 370, have appealed to the United States Court of Appeals for the Ninth Circuit from the judgment of the United States District Court for the Eastern District of [177] Washington, Southern Division, entered against them in the above-entitled action on



April 14, 1958, for the sum of \$147,284.41, together with interest and costs, which judgment of April 14, 1958, was amended by an order of said District Court entered May 8, 1958;

Now, Therefore, if said principals and appellants shall pay all costs if their said appeal is dismissed or the said judgment is affirmed or such costs as the Appellate Court may award if the judgment is modified, then this obligation shall be void, otherwise to remain in full force and effect.

INTERNATIONAL BROTHERHOOD OF  
TEAMSTERS, CHAUFFEURS, WARE-  
HOUSEMEN AND HELPERS OF AMER-  
ICA, LOCAL No. 839,

BASSETT, DAVIES &  
ROBERTS,

/s/ STEPHEN V. CAREY,  
Its Attorneys;

INTERNATIONAL UNION OF OPERATING  
ENGINEERS, LOCAL No. 370,

By /s/ R. MAX ETTER,  
Its Attorney;

By /s/ ARTHUR A. ROSSMAN,  
Its Business Manager.



[Seal] FIDELITY & DEPOSIT COMPANY OF  
MARYLAND, a Corporation,

By /s/ RICHARD K. DAVEY,  
Its Attorney-in-Fact.

[Endorsed]: Filed May 12, 1958. [178]

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[Title of District Court and Cause.]

ORDER EXTENDING TIME TO FILE  
AND DOCKET RECORD ON APPEAL

Upon request of the Clerk of this Court and for  
good cause shown, It Is Hereby

Ordered that the time in which to file and docket  
the record on appeal in the above-entitled cause in  
the United States Court of Appeals for the Ninth  
Circuit, be extended to and including the 25th day  
of July, 1958.

Dated this 3rd day of June, 1958.

/s/ SAMUEL M. DRIVER,  
United States District Judge.

[Endorsed]: Filed June 3, 1958. [182]



In the District Court of the United States for the  
Eastern District of Washington, Southern  
Division

Civil No. 1105

MORRISON-KNUDSEN COMPANY, INC., a  
Corporation,

Plaintiff,

vs.

INTERNATIONAL BROTHERHOOD OF  
TEAMSTERS, CHAUFFEURS, WARE-  
HOUSEMEN AND HELPERS OF AMER-  
ICA, LOCAL No. 839, et al.,

Defendants.

Sam M. Driver, United States District Judge.

TRANSCRIPT OF PROCEEDINGS

June 10, 1957

Appearances:

GERALD DeGARMO, ESQUIRE,  
ALLEN, DeGARMO & LEEDY,  
HAROLD J. HUNSAKER, ESQUIRE,  
ALLEN, DeGARMO & LEEDY,

Appeared on Behalf of the Plaintiff.

R. MAX ETTER, ESQUIRE,

Appeared on Behalf of the Defendant In-  
ternational Union of Operating En-  
gineers, Local No. 370.

STEPHEN V. CAREY, ESQUIRE, of  
BASSETT, GEISNESS & VANCE,

Appeared on Behalf of the Defendants,  
Teamsters Local No. 839, Joint Council  
of Teamsters No. 28, and Western Con-  
ference of Teamsters.



(Whereupon, the following proceedings were had and done and testimony taken, to wit):

The Court: Morrison-Knudsen Company, Inc., vs. International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local No. 839, et al. Are you ready on that matter, gentlemen?

Mr. DeGarmo: Yes; we are.

Mr. Etter: Yes; we are. [184]

\* \* \*

The Court: Mr. Carey, the motion you propose to make, would that require evidence to support it?

Mr. Carey: No; no. Just requires an elementary knowledge on the part of your Honor of the Taft-Hartley Law.

The Court: If it doesn't require evidence, of course, if you are going to bring in testimony here, or evidence of any kind that you are not prepared to meet, that wouldn't be fair. But if it is simply on a motion that requires no evidence, if you are not prepared to meet it now, I can give you an opportunity to submit briefs or get further time on it, whatever you wish, before I finally determine it.

Would that be acceptable?

Mr. DeGarmo: Yes. I am not objecting if [195\*] they have some question, I would like to get that determined.

The Court: If it is really a question of jurisdiction it can be raised at any stage.

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\*Page numbering appearing at foot of page of original Reporter's Transcript of Record.



Mr. DeGarmo: That is right; I am not objecting to their raising it.

Mr. Carey: Even in the Court of Appeals if it hadn't been raised below.

The Court: That is right.

Mr. DeGarmo: I haven't heard it before. I will be glad to hear it now.

Mr. Carey: I am very glad to accommodate you.

Frankly, maybe I am in some degree subject to censure for not having raised it before. If I am, it is just because of my lack of diligence. There are so many questions involved here that I just didn't do it before.

Here is the formal motion which in effect is a challenge to the jurisdiction so far as, not the Local 839, but the Joint Council 28 and Western Conference only.

Joint Council No. 28 of Teamsters and Western Conference of Teamsters each separately moves to dismiss this action as to it for the following jurisdictional reasons: [196]

1. Plaintiff invokes the jurisdiction of this United States Court relying exclusively on Section 301 of the Labor Management Act of 1947, commonly known as the Taft-Harley Law. The action is one to recover damages for the alleged breach of a contract dated December 19, 1955, a copy of which is attached to the plaintiff's amended complaint as Exhibit A.

Neither the Joint Council No. 28 nor the Western Conference is a party to that contract. Therefore, neither is within the grant of jurisdiction defined



in Section 301 of the Labor Management Act of 1947.

2. If it be assumed that the plaintiff's amended complaint states any cause of action against either Joint Council No. 28 or the Western Conference, which is not conceded, nevertheless, the cause of action so stated is not one for violation or breach of contract, but rather is one for inducing a breach of contract by the Teamsters Local 839 which is an action for tort not within the jurisdiction conferred on the United States District Court by Section 301 of the Labor Management Act of 1947. [197]

\* \* \*

The Court: All right; thank you.

On this issue of liability I assume that the plaintiff would have the burden here, proceeding with the evidence. [203]

Mr. DeGarmo: May I address the Court?

The Court: Yes.

Mr. DeGarmo: At this time, if your Honor please, on behalf of the plaintiff I wish to renew orally a motion to strike. It is really not a renewal because the original motion to strike was directed against certain allegations of the affirmative defense of the original answer of the Teamsters and Operating Engineers to the original complaint of the plaintiff.

I now wish to address a motion to strike to the affirmative defenses as set forth in the amended answers or the answers of the Teamsters and Operating Engineers to the amended complaint of the



plaintiff. And the reason I address myself to this motion at this time is that I think it is well to present it to the Court now inasmuch as the motion has to do entirely with the question of the application of the parol evidence rule to the issue in this case, and it would be equally applicable, and I would have to make the same argument in any testimony as attempted to be offered in support of the affirmative defenses, so we might just as well dispose of it on a motion to strike the affirmative defenses, and then if that is granted, then it will not be [204] necessary to make the same argument with respect to the evidence.

I have filed with your Honor, and have served upon counsel, a motion, or rather a brief in support of this motion, and I have set forth in that brief—I think it will save your Honor looking at the pleadings if you will refer to the brief I presented on the parol evidence rule, because I have set forth in length in that brief the particular allegations of the affirmative defenses, and they are identical with respect to the two defendants to which this motion is directed, and the part which I am moving against and asking to have stricken is the portion which is quoted on page 1 of this brief.

Reading in this matter—your Honor will remember, and I wish to just go back a minute to refresh all of our recollections as to the basis of this litigation, that as Mr. Carey has pointed out to your Honor in support of his motion, the suit is based upon contract, upon two contracts, one between the Associated General Contractors made on behalf of



Morrison-Knudsen with the Teamsters, the other is on behalf of the Associated General Contractors made on behalf of the plaintiff with the Operating Engineers. And the suit, as I say, is upon that contract. [205]

Now in an endeavor to avoid the effect of the contract itself upon them, these defendants have pleaded thusly——

The Court: Pardon me, Mr. DeGarmo, before you proceed. I think I should inquire as to whether counsel for defendants feel that this section of their affirmative defense adequately states your position. In other words, are you intending to rely on this language in your permanent defense, or do you think you have evidence that will not——

Mr. Carey: I can't speak for Mr. Etter but speaking only for myself we are relying upon the affirmative defense as pleaded in our answer to the amended complaint. There is some variation.

Mr. DeGarmo: That is the one.

The Court: The one set out here?

Mr. DeGarmo: Yes, that is correct. You can check it with your answer as I read it to the Court now.

The Court: The thought I had in mind, I don't want to spend considerable time here and have them come in and say, "We'd like to amend it because we have evidence here that will go beyond." If you intend to rely on this it can be determined on this motion. [206]

Mr. Carey: As far as I know, I have no reason to think that we are not going to rely on that as stated.



The Court: Is that true of you, too, Mr. Etter?

Mr. Etter: Yes; there is an amended answer for the Engineers. If Mr. DeGarmo is reciting from that affirmative defense we are relying on that, yes.

The Court: I recall this language. It came up in motions down in Yakima, I think. It wasn't finally decided.

Mr. DeGarmo: Not this language. It was somewhat similar language in a previous answer. They have now changed the allegations and accordingly, your Honor will recall that on the previous motion to strike you denied it and said you did so with the idea that you'd like to hear the evidence at the time of trial, at least it was to be reserved until that time.

Since that time we filed an amended complaint and by their election they elected to file new answers and I am now quoting from the affirmative defense as set forth in the answer to the amended complaint, and as I understand it, this is the affirmative defense that they now intend to rely upon and attempt to [207] introduce evidence in support of.

The Court: All right.

Mr. DeGarmo: I might state to your Honor there is another portion of the affirmative defense that is not quoted here and which I will refer to subsequently. This motion is directed against this particular language. And keep in mind that there are two contracts here (reading):

"Said area, although in part within the exterior boundaries of Benton County, has always been regarded by labor unions and by contractors as segre-



gated from the remainder of Benton County for the purpose of negotiating labor agreements, and was so regarded when the labor agreements described in the plaintiff's original and amended complaints were being negotiated. For many years prior to and during the year 1955 all contractors contracting with the United States Atomic Energy Commission for the performance of construction work in said area, have negotiated their labor agreements with labor unions [208] including the defendant Local 839"—

And I am quoting in this part from the Teamsters' answer. The Operating Engineers' is identical except it refers to Local 370. (Continuing reading.) "——through their bargaining representative known as Hanford Negotiating Committee, and all such contractors who at the same time were engaged in performing construction work in Benton County and adjoining counties but not within said area, negotiated their labor agreement with a labor organization including Local 839 through another and different bargaining representative known as Associated General Contractors of America, Inc., Spokane Chapter. Agreement dated the 19th day of December, 1955, by and between Associated General Contractors of America, Inc., Spokane Chapter, and Teamsters Unions Locals 690, 148, 556, 551 and 839, attached to plaintiff's original complaint as Exhibit A, does not apply and was not intended to apply to construction work to be performed by plaintiff for the Atomic Energy [209] Commission under



the contract described in paragraph IV of the plaintiff's complaint."

The Court: The amended complaint?

Mr. DeGarmo: Of the amended complaint, [210] yes.

\* \* \*

The Court: I think I have it in my file. I think I will recess now and read cases during the lunch hour. You will then have an opportunity to reply immediately after lunch.

Court will be in recess until 1:30. [237]

\* \* \*

The Court: I might say that the letter I sent out to counsel, I think I reserved ruling on the merits of the issues preceded by the motion to strike. Federal Courts are not inclined to look with favor upon deciding issues by pleadings by motion to strike particularly in the early stages of litigation, and I don't feel at all bound by that.

Here we have quite a different situation where the separation of liability is before the Court for determination and counsel have indicated that the statement in there from the defendant fully covers their position and that the evidence which they would be in a position to introduce would not be broader or substantially different from the allegations, from the affirmative defense, the amended complaint. I [248] think I recall the case brought by the National Labor Relations Board that was tried at Yakima and I think the details of the situation were somewhat different there.



The question wasn't squarely presented. I think, of course, where there is a contract before the Court, particularly one which involves engineering or technical subjects and technical language, that it is advantageous for the Court perhaps to, in understanding background, understanding the subjects to which it is to apply, to understand the terms perhaps in some instances, that the Court may hear evidence of the negotiations leading up to the contract, the making of the contract in order to put the Court, as the Supreme Court of the State of Washington said, in the same position of the parties, same position of understanding and same position of knowledge of what the contract involves, what it pertains to and perhaps some of the terms employed, but I think in those cases, as I remember them, the Court is careful to point out that this is not taking the prior negotiations to vary the terms of the contract or to change its plain, unambiguous term so as to make a different contract from the one that parties have entered into.

Also so far as that goes, I quite agree with [249] the late Mr. Justice Jackson, that when he was confronted with a decision he had made that was inconsistent with his present views he said, "I see no reason why I should be consciously wrong today because I was unconsciously wrong yesterday."

So I think that it is better to be right than to be consistent when it comes right down to that. But it seems to me that here this contract is not ambiguous in respect to the coverage of the contract as including Benton County. I can't see any ambiguity in it.



I'd have to go outside and get evidence in order to find that there was any ambiguity and it seems to me that bringing in evidence here as to what the parties or at least one party contended, it would be violating the parol evidence rule.

There isn't here any contention, as I get it there was a mutual mistake, that the plaintiff also was mistaken and thought he wasn't dealing with Benton County. That, I assume, could not be established, I mean that the plaintiff was mistaken and thought he was not dealing with the Hanford Works or the contract was not to cover the Hanford Works.

It seems to me that here would be bringing evidence to show that while the contract was made to cover Benton County by plain terms, by implication [250] by exclusion of other areas that were not to be included in other counties, and by the maps attached, all indicate that the parties were dealing with Benton County as a geographical unit, as a county, and certainly nobody would have any doubt as to what Benton County, Spokane County or any other county means so far as its covering a particular area is concerned.

I also have in mind that in matters of this importance the parties here, Morrison-Knudsen, these Local and International Unions, Joint Council of Teamsters, are not like a grocer or a couple of grocers getting together and making a contract without the benefit of counsel or with perhaps counsel who is employed on the spur of the moment. These people are well represented. They have adequate legal staffs and legal representation.



They certainly knew, as everyone knows, what the situation was with reference to the Hanford area and if they did not intend to, if they intended it should be excluded from this contract it seems to me that the lawyers on one side or the other would have spelled it out in plain English and said so.

It would have been so easy to do. So that I think that the motion to strike should be granted. I have in mind perhaps that the defendants here who [251] wish to make their record, and may I suggest that perhaps the shortest, easiest way to do that would be for you to make an offer of proof at the proper time setting forth what your witnesses would testify or what your evidence would show with reference to your contention that the contract was not intended to and should not have covered, was not intended to and should not cover the Benton area, and, of course, I will permit you to make that offer even though the motion to strike affirmative defense has been granted.

Mr. Etter: Of course our position too is that the plaintiff never intended to cover—as your Honor knows, I gather that from one statement made. We don't say we were mistaken, we say they didn't intend to cover it in their end of it.

The Court: It would still be the unexpressed intention of the parties contrary to the contention as I see plainly expressed in the instrument. I gather that you are not claiming the legal defense of mutual mistake?

Mr. Etter: No, we don't say mutual mistake.



Mr. Carey: If your Honor please, I don't know whether I am speaking for you, Mr. Etter, or for ourselves.

The Court: If you are not speaking for [252] him, he will let you know, or me know, I [253] presume.

\* \* \*

The Court: All right. I'd suggest you proceed with your proof, Mr. DeGarmo.

Mr. Carey, at the conclusion of his evidence any objections you have should be made on the sufficiency of his evidence.

I assume, Mr. DeGarmo, the issue of [257] liability if that is what we are trying, should include not only your contract, proof of your contracts and rights under the contract, but also the question of breach, would it not?

Mr. DeGarmo: Well, we are prepared to prove the breach although I didn't——

The Court: How could you establish liability without proving it?

Mr. DeGarmo: We are prepared to prove a breach.

The Court: I thought I wasn't just here to decide whether there is a contract or not.

Mr. DeGarmo: I think we are in a position to prove, although I don't think there is a great deal of issue between us.

The Court: All right.

Mr. DeGarmo: Maybe they will claim they didn't strike, but we will find out.



## LEE KNACK

being first duly sworn on oath was called as a witness on behalf of the Plaintiff and testified as follows, to wit:

## Direct Examination

By Mr. DeGarmo:

Q. Will you state your name, please? [258]

A. Lee Knack.

Q. And where do you reside, Mr. Knack?

A. In Boise, Idaho.

Q. And will you state your age for the record?

A. Forty-three.

Q. And by whom are you employed?

A. Morrison-Knudsen Co., Inc.

Q. And in what capacity are you employed, Mr. Knack?

A. Labor Relations Director.

Q. Will you state for the record just generally over what area the Morrison-Knudsen Co. operates?

A. As the Morrison-Knudsen Co. we operate in the United States and Alaska. We also operate in Canada. We also have subsidiary companies in foreign countries.

Q. And does your work as Labor Relations Director relate only to the activities within the United States, or to other areas?

A. My activities relate to United States, Canada, and Alaska.

Q. And for what period of time have you been employed in the capacity that you have mentioned?

A. In my present capacity as Labor Relations



(Testimony of Lee Knack.)

Director in excess of three years, about three and one-half years now. [259]

Q. Will you state, Mr. Knack, very briefly what is your background in this particular field of work?

A. Well, I began to have an association with the field of labor relations in about 1937 working for a chemical company. I worked for approximately six years with General Motors in their Industrial Relations Division of which Labor Relations is a subsection.

I also operated my own public and Labor Relations Agency in Colorado for a period of about six years prior to coming with the Morrison-Knudsen Co.

Q. Are you familiar, Mr. Knack, with an area which is commonly referred to, at least it has been in these proceedings, as Hanford Works?

A. Yes; I am.

Q. On or about November 25th of 1955, will you state whether Morrison-Knudsen Co. entered into a contract to perform certain work for the Atomic Energy Commission in that area?

A. Yes; we did.

Q. Do you have available with you here in court the original of that contract?

A. Yes, I have, in my briefcase. May I get that?

Q. If you will, please.

(Whereupon, the witness obtained his briefcase and resumed the stand.) [260]

Q. Mr. Knack, at my request did you have some



(Testimony of Lee Knack.)

photostatic copies made of the document which you have now obtained in this case? From your brief-case? A. I did.

Mr. DeGarmo: I don't know what your Honor's practice is. I would like, if possible, to preserve out of the record the original of this contract since it is part of the company records. I have prepared photostatic copies and do we mark the original and then ask leave to withdraw it and substitute a copy?

The Court: If counsel have no objection you may use the photostatic copy.

Mr. Carey: As far as I am concerned if Mr. DeGarmo says it is a correct copy, why it is.

Mr. Etter: No objection.

Mr. DeGarmo: I'd rather Mr. Knack says it is a correct copy.

The Court: You may put in the photostatic copy.

The Clerk: Plaintiff's 1 for identification.

(Plaintiff's Exhibit No. 1 marked for identification.)

Q. Mr. Knack, I am handing you that which has been marked as Plaintiff's Exhibit No. 1 for identification. Will you examine that and state whether that is a photostatic [261] copy of the original contract between the Morrison-Knudsen Co. and the Atomic Energy Commission that I mentioned in my previous question? A. Yes, it is.

Mr. DeGarmo: I think Mr. Carey has had an



(Testimony of Lee Knack.)

opportunity to examine this but I don't believe Mr. Etter has.

Mr. Carey: Yes. I told Mr. Etter I had and he took my word for it.

Mr. DeGarmo: I want to offer him the courtesy of looking at it at least.

The Court: That is the prime contract directly with the Atomic Energy Commission?

The Witness: Yes.

Mr. Carey: Yes.

Mr. Etter: You say you have an additional one of this?

Mr. DeGarmo: I have only one more copy but I will be glad to leave this with you if you'd like to examine it.

Mr. Etter: Fine, I have no objection and I will look at this so we can move on.

The Court: It will be admitted.

Mr. DeGarmo: Exhibit 1 is offered. [262]

(Plaintiff's Exhibit No. 1 admitted in evidence, attached hereto and made a part hereof.)

Q. Mr. Knack, I want to call your attention to a specific provision of Plaintiff's Exhibit 1 which appears in the section that is entitled "Supplement A to General Provisions, Standard Form 23-A" on page 10 entitled "Prevailing Wage Rates and Allowances," and ask you if reference is made in that portion of the contract to a document known as Hanford Works Agreement? A. Yes.

The Court: What page is that?



(Testimony of Lee Knack.)

Mr. DeGarmo: It is on page 10 of a portion of the document which is entitled "Supplement A to General Provisions, Standard Form 23-A" on page 10 entitled "Prevailing Wage Rates and Allowances."

Q. Mr. Knack, will you state whether or not Morrison-Knudsen, during the year 1955, became a member of the Associated General Contractors of America, Spokane Chapter, Heavy Highway and Engineering? A. Yes; we did.

Q. Can you state the approximate time when you became such a member?

A. I believe it was in February of 1955. [263]

Q. Upon becoming such a member, Mr. Knack, what was the situation with respect to the bargaining rights for collective bargaining contracts with labor unions in the area covered by the Spokane Chapter?

A. Well, at approximately that time we had been successful contractors in bidding a job at Fairchild Air Base here. We became members of the AGC specifically to be covered by the labor agreement as existed between the various crafts and the Associated General Contractors, Spokane Chapter.

Q. Specifically did the bargaining rights which Morrison-Knudsen Co. had with labor unions remain subject to the Morrison-Knudsen jurisdiction, or did they become a part of the Spokane Chapter jurisdiction?

Mr. Carey: Just a moment. I think, your Honor,



(Testimony of Lee Knack.)

that that calls for a conclusion of law as to what the effect of a contract is.

The Court: Possibly it may. If it does I will reserve decision on it. It might be an expert conclusion regarding it. I will overrule the objection.

A. May I have it again?

(Whereupon, the reporter read back the last question.)

Mr. Etter: Your Honor, I don't want to interrupt, but I wonder if counsel would clarify it. [264] You stop me if I'm not right. As I understand it, there are two Chapters of AGC. One is known as Heavy Highway and another, a separate chapter that has to do mostly with building structure, is that correct?

A. Yes.

Mr. DeGarmo: In order to clarify that—I appreciate there is that distinction here. Unless I am referring to the building chapter I am at all times referring to the Heavy Highway and Engineering which is the only one with which we are concerned here.

A. I think in answer to the question it is necessary to be a little bit more general as the question applies to the specific instance here, because I cannot answer that the Morrison-Knudsen Co.'s bargaining rights were exclusively assigned to the AGC Chapter, Heavy Highway Chapter, because of some other factors that existed. Specifically we had been engaged in the construction project known as the Chief Joseph Powerhouse. At which time we en-



(Testimony of Lee Knack.)

tered into that some two or three years previous to February of 1955, we negotiated with the various unions a project agreement, and that work was still in progress at the time that we joined the Chapter in 1955, in February of '55, and also we had other work that was of a miscellaneous nature, I suppose one might say. But upon joining the Chapter [265] in February of 1955, all of Morrison-Knudsen Co.'s bargaining rights for work with the exception of that work which we were performing at Chief Joseph Powerhouse, all of the bargaining rights with the exception of that project were invested and turned over to the AGC, Spokane Heavy and Highway Chapter. We retained our bargaining rights on Chief Joseph Powerhouse because we had a project agreement which was written for the duration of the project, and, therefore, we retained it. It was actually written in rather peculiar fashion in that it, it was for the duration of the project or until Chief Joseph Builders, which was another contract on the dam part itself, completed their work, whichever occurred earlier.

Q. Mr. Knack, in the late fall, early winter of 1955, were you aware that a new contract was being negotiated by the Spokane Chapter with the Teamsters and the Operating Engineers? A. Yes.

Q. Did you personally take any part in the negotiation of that contract?

A. No, I did not.

Q. Are you familiar with the contract?

A. Yes, I am.



(Testimony of Lee Knack.)

Mr. DeGarmo: These contracts, if your Honor [266] please, are attached to the complaint and they are admitted, but I think for the purpose of convenience of everyone, it is better to have copies introduced in evidence.

The Court: I think it is better to have them in evidence as well as in the pleadings.

The Clerk: Plaintiff's 2 and 3.

(Plaintiff's Exhibits Nos. 2 & 3 marked for identification.)

Mr. Carey: Which is which?

Mr. DeGarmo: Will you reverse that and make Teamsters 2 and Operating Engineers 3, because we usually use the Teamsters' designation first and they are first in the pleadings.

Q. I am handing you first, Mr. Knack, that which has been marked as Plaintiff's Exhibit 2 for identification. Will you examine it and state what it is if you know?

A. This is the agreement between the Associated General Contractors, Spokane Chapter, and the Teamsters for a Heavy and Highway Construction Agreement covering eastern Washington and northern Idaho.

Q. What application, if any, Mr. Knack, to the work of Morrison-Knudsen Co. in the area covered by that agreement did that contract have? [267]

Mr. Carey: Just a moment. I object to that at the moment upon the ground that he is asking his witness to construe a written contract. I think the



(Testimony of Lee Knack.)

orderly thing to do would be to offer the contract in evidence and I have an objection to its admission.

The Court: Alright.

Mr. Degarmo: I have no objection to doing it that way. It is immaterial to me.

Q. Before offering this I am asking, handing you Plaintiff's Exhibit 3 for identification. Will you examine it and state what it is if you know?

A. This is the agreement between the Associated General Contractors, Spokane Chapter, and the Operating Engineers Local 370 on Heavy and Highway Agreement covering eastern Washington and northern Idaho.

Mr. DeGarmo: And I wish to offer Plaintiff's Exhibits 2 and 3.

Mr. Carey: So far as Exhibit 2, the Teamsters' contract is concerned, I object to its admission so far as Council 28 and Western Conference is concerned upon the ground that it appears upon the face of the contract itself that they are not parties to it.

I also object to the admission of the contract on behalf not only of the Council and the Conference, but on behalf of Local 839 as well because [268] the plaintiff in this case, Morrison-Knudsen, is not a party to the contract. The contract is between the Associated General Contractors and several local unions whose names appear on it.

Mr. DeGarmo: I think the testimony already is, if you Honor please, and which I can further supplement if necessary, that the bargaining rights



(Testimony of Lee Knack.)

with respect to this contract had been assigned to AGC Spokane Chapter and I am speaking of Heavy Highway and Building, and there is such a rule I am sure that Mr. Carey must recognize as a contract made for the benefit of the third party.

Mr. Carey: Your Honor, that is specifically what I don't recognize. I don't recognize anything that is adverse to my side of the case.

The Court: I think this witness has testified on becoming a member of the Spokane Chapter here of the Associated General Contractors that Morrison-Knudsen turned over the bargaining rights to this Association, but I think you should have more proof than that in the record eventually in view of councils's objection, to show just what this Association is and how it operated and that it did actually act for it.

Mr. DeGarmo: I have the Executive Secretary here who will be produced as a witness. I wish to [269] ask Mr. Knack a further question on the subject.

Q. Mr. Knack, referring now to—well, let's go back a minute.

Mr. DeGarmo: Do I understand that the offer of proof is not accepted at this time as the contracts, that they are——

The Court: No, I think perhaps it is sufficient for the purpose of admitting the documents into evidence, but I just made the suggestion that I would feel more comfortable if you had more proof



(Testimony of Lee Knack.)

on it which, I understood, that you were going to produce by other witnesses.

Mr. Degarmo: I was only asking because I wish to know whether I should refer to them as exhibits for identification or as exhibits, is all.

The Court: I am going to rule now. I think they should be admitted. Of course, if they are admissible as to any parties where there are multiple parties, if they are admissible to any party they should be admitted in evidence and the Court will subsequently determine their legal effect.

Mr. Carey: Is your Honor ruling on both or only on the Teamsters'?

The Court: I suppose the only one that is, that I have before me is the Teamsters'. I will admit [270] 2 then.

The Clerk: Counsel offered them both.

The Court: You did offer both, did you not?

Mr. DeGarmo: Yes, that is correct.

The Court: You should make your offer.

Mr. Etter: Your Honor, I'd like the record to show I have no objection to the admission of the contract for what it purports to be, just a contract, but I do have an objection as to the materiality of the contract and as to its effect as binding upon Local 370 on the ground already stated by Mr. Carey, that the Morrison-Knudsen Co. is not a party to the contract, and next on the ground that counsel has stated that his theory for, his theory here is as a third party beneficiary and as to that I also object to its admission on the ground the



(Testimony of Lee Knack.)

case has established that under this section of the Taft Act, it is not available to third party beneficiary.

Mr. DeGarmo: We will argue that.

Mr. Etter: But I want the record to show it, too. He is stating the position and I want the record to show it is another objection.

The Court: 2 and 3 will be admitted.

(Plaintiff's Exhibits Nos. 2 & 3 admitted in evidence, attached hereto and made a part hereof.) [271]

Mr. DeGarmo: Might I have Exhibit 2, please.

The Court: There will be a serious contention made, I understand here, that under the Taft-Hartley Act one who is not directly a party to the contract——

Mr. Carey: Yes, yes.

The Court: Alright, we will decide that when we get to it.

Mr. DeGarmo: That is an interesting point. I am willing to argue on it when we get to it.

The Court: To use the language of one predecessor, this case begins to bristle with difficulties.

Mr. DeGarmo: I assumed it wouldn't be easy sailing.

Mr. Carey: You are correct.

Q. Mr. Knack, I again ask you what application, if any, did the contract which you hold in your hand as Plaintiff's Exhibit 2, have to the work



(Testimony of Lee Knack.)

of Morrison-Knudsen Co. in the area as described in the agreement?

Mr. Carey: Just a moment.

Q. (Continuing): I am not referring to the written agreement; I am referring to what the application——

Mr. Carey: I object to that because he is now asking your Honor to rule contrary, as I see it, to the ruling you have already made. If this contract [272] is plain on its face and is not subject to explanation by defendants' testimony, certainly it isn't subject to explanation by the plaintiff's testimony.

Mr. DeGarmo: Well, I will call Mr. Carey's attention to the fact that this contract does not purport to be a contract between the Associated General Contractors which employs no one on any job, and the Unions, and in Section 3—I am reading from the wrong exhibit, but I think there is an identical provision in this one (Reading):

“It is made clear that the person signing this agreement on behalf of each employer——”

He is not signing on behalf of the AGC. (Continuing reading):

“——on behalf of each employer warrants and guarantees his authority to act for and bind each such respective employer. Each person signing this agreement on behalf of each Union, warrants and guarantees his authority to act for, bind and collectively bargain for and on behalf of such respective Union.”



(Testimony of Lee Knack.)

So this was not an agreement which purported to be between the AGC as such. It purports to be between the [273] AGC acting for employers.

Mr. Carey: That doesn't go to my objection. My objection is that if your Honor is correct, that we can't explain the scope of this contract by oral evidence, neither can the plaintiff.

The Court: If I understand it, he is not trying to explain the scope or vary the terms of the contract. He is simply wanting to know if they acted under it whether it applied to them, and I think he can testify what his company did under this contract, that is, how they operated under it without going to the legal question that counsel has in mind as to whether it should legally apply to the work at Hanford.

Mr. Carey: Just a moment again. Now may it be understood, your Honor, that in order to save you duplication Mr. Etter and I have undertaken to sort of divide the work. When I make these objections may it be understood that my objections go not only to the Teamsters' contract but also the Engineers'?

Mr. Etter: Unless I dispute you.

The Court: Suppose we have this understanding that it is quite usual, I think, in this type of case, whenever Mr. Carey or Mr. Etter raise an objection and makes a point here to admissibility of evidence it shall apply to both defendants, equally to each [274] defendant unless counsel indicates otherwise at the time. If you don't want it to apply speak



(Testimony of Lee Knack.)

up, otherwise I will assume that it does go to both defendants.

Mr. Carey: I can say this for your information, if Mr. Etter and I have any disputes we will settle them out in the hall in private.

Q. (By Mr. DeGarmo): Do you recall the question, Mr. Knack?

A. I think you asked me as to what applicability this contract had in relation to the work being performed or performed by Morrison-Knudsen Co.

Q. Yes, sir.

A. And my answer to that question is that after our becoming members of the Associated General Contractors, Spokane Chapter, the agreement which is here as Exhibit 2 was binding on Morrison-Knudsen Co. Our work was performed under the provisions of this agreement.

Q. I am handing you now Plaintiff's Exhibit 3 and ask you what application, if any, that agreement with the Operating Engineers had with the work of Morrison-Knudsen Co. in the area which is described in the agreement?

A. We operated under the terms and provisions [275] of this agreement.

Q. To your knowledge, Mr. Knack, have there been any instances, or what instances have there been, would perhaps be a better way to put it, if any, where any dispute has arisen between the Union and, any Union, either the Teamsters or Operating Engineers, under either of these agreements



(Testimony of Lee Knack.)

and Morrison-Knudsen Co.? I don't know that there are any. I am asking you if there were any?

A. There have been occasions in relation to some possible work in which I requested the AGC to call a meeting between the Teamsters and the Operating Engineers. And specifically that was in relation to our work at Chief Joseph because as this agreement was written in 1955 we still had some work to complete. We had roughly six months, seven months of work to complete at Chief Joseph. Therefore, as the anniversary date that we had customarily negotiated on Chief Joseph project arrived, around January 1st of 1956, I had been told and had examined the agreement and discerned that it no longer permitted project agreements. So therefore, I contacted the Executive Secretary of the AGS and requested a conference with the Unions involved in order to determine whether or not there was a possibility of our continuing to complete the seven or eight [276] months' work that we had at Chief Joseph under the terms of our project agreement rather than under the terms of the AGS agreement.

Q. Was there such a meeting held?

A. Yes, there was.

Q. And do you recall where it was held and when specifically?

A. It was held in the early part of January of 1956 in the Associated General Contractors' office.

Q. And who were present as you recall, if any one, representing either the Teamsters or Operating Engineers?



(Testimony of Lee Knack.)

A. Mr. Rossman was present, of the Operating Engineers; Mr. Hollingsworth was present from the Operating Engineers; Mr. Don High of the Teamsters was present. There were other people present from other crafts. However, my memory doesn't recall everybody.

Q. I am specifically interested in Teamsters and Operating Engineers.           A. Yes.

Q. At that meeting.

A. Incidentally, I might emphasize, too, at that meeting some members, whether it constituted the full bargaining committee of the Associated General Contractors [277] or not, I do not know, but there were some members of the Associated General Contractors bargaining committee who were also present at that meeting.

Q. Now referring to this meeting which I think you stated was held on the 5th of January, 1956, will you state whether either or both of Exhibits 2 and 3 were a subject for discussion at that time and as related to work of Morrison-Knudsen Co.?

A. I don't remember the exact date of the meeting. I didn't mention that it was January 5, 1956, but it was early in January of '56.

Q. Early in January?

A. Yes, these specific agreements were part of the discussion in that the provision written into the agreement which prohibited project agreements was mentioned and applied directly in relation to our Chief Joseph project, which the purpose of the meeting had been called for, and I was informed



(Testimony of Lee Knack.)

that the project agreement could not apply and it would be necessary for these two agreements to apply until the job was completed for the seven or eight months that was involved.

Q. Were the two representatives from the Operating Engineers and the one from the Teamsters that you mentioned present at this meeting? [278]

A. They were present. However, there were others who were present, too, who my memory doesn't permit me to recollect.

Q. What, if any, contention was made at that time, Mr. Knack, that these agreements were not binding on Morrison-Knudsen Co.? I am referring to Plaintiff's Exhibits 2 and 3.

A. None whatsoever.

Q. Is there any contention that they were binding? A. Yes, sir.

Q. Mr. Knack, I have already called your attention to the contract between the Atomic Energy Commission and Morrison-Knudsen Co. I wish to ask you what relationship, if any, did the Hanford Works Agreement have to the performance of the work by Morrison-Knudsen Co. at the Hanford project under the contract?

A. By the terms and provisions of the contract which was between the Morrison-Knudsen Co. and the United States Atomic Energy Commission there was a provision contained in the agreement itself which obligated us to abide by the provisions of the Hanford Works Agreement as long as it was in existence.



(Testimony of Lee Knack.)

Q. Well, other than that contractual provision, [279] what relationship, if any, did Morrison-Knudsen Co. have to Hanford Works Agreement?

A. Outside of that provision none beyond that.

Q. Mr. Knack, from January 1, 1956—strike that please.

Will you state, Mr. Knack, whether the particular project covered by the government contract which is Plaintiff's Exhibit 1, at Hanford Works, has been completed? A. Yes.

Q. From the date of January 1, 1956, until the completion of that project, what agreement, if any, was there between Morrison-Knudsen Co., Inc., and the Teamsters Union? A. The agreement——

Mr. Carey: Just a moment, your Honor. Is counsel referring now to some agreement other than the one that is in evidence, or some oral agreement?

Mr. DeGarmo: Quite to the contrary. I want to show that is the only agreement.

The Court: Alright.

Mr. DeGarmo: I am not trying to go outside of that one.

A. (Continuing): The agreement that existed or the agreement that had been negotiated between the [280] Associated General Contractors and the Teamsters.

Q. You are referring now to Plaintiff's Exhibit 2, I believe? A. 2, yes.

Q. And what—from January 1st of 1956, until the completion of the Morrison-Knudsen Co. work at Hanford project under the contract which is in



(Testimony of Lee Knack.)

evidence here as Plaintiff's Exhibit 1, what contract was there between the Morrison-Knudsen Co. and the Operating Engineers?

A. The agreement that had been negotiated between the Spokane Chapter of the Associated General Contractors and the Teamsters.

Q. Was there any other agreement to your knowledge?      A. No, sir.

Mr. DeGarmo: I think you may examine.

Cross-Examination

By Mr. Etter:

Q. Mr. Knack, as I understood your testimony, your first few answers to Mr. DeGarmo, you stated that you had been the Director of Labor Relations for Morrison-Knudsen for about three and one-half years?      A. That is correct.

Q. Now that would be approximately sometime [281] in 1954 when you became Labor Relations Director, would that be right, it being now about June of 1957?

A. Yes, that was in January of 1954.

Q. January, somewhere around there. Now prior to that time, Mr. Knack, had you been in a position with Morrison-Knudsen where you were associated in some manner with the Labor Relations of that company having to do——      A. Yes, I was.

Q. You were?      A. Yes.

Q. Were you the assistant then to the Labor Relations Director?      A. Yes.



(Testimony of Lee Knack.)

Q. And what was his name?

A. Ray Fortune.

Q. Ray Fortune? A. Yes, sir.

Q. How many years prior to that time had you been the assistant to Mr. Fortune?

A. From March of 1952 until January of 1954.

Q. Until January of 1954. So that actually you have been working either as an Assistant Director or a Director of Labor Relations for Morrison-Knudsen since approximately 1952? [282]

A. Yes.

Q. Now I think you said, too, that you entered into a, or became a member rather, of the Associated General Contractors in February of 1955?

A. Yes.

Q. And I think you said that at that time that you became a member of AGC, that was what they call the Heavy Highway Division?

A. That is correct, sir.

Q. That is right. Now you were aware at that time, were you not, that there were two divisions of the Associated General Contractors, one the Heavy Highway Division and the other a Building Construction Division of some kind?

A. Yes, sir.

Q. Do you recall what the title of the other Chapter is?

A. Specifically I couldn't—I think it is the—I'm sorry. It is the Building Chapter is the common phrase or terminology.



(Testimony of Lee Knack.)

Q. Now you, Morrison-Knudsen—would you tell me whether or not Morrison-Knudsen has ever been a member of the so-called Building Chapter as distinguished from what we know as the Heavy Highway Division? [283]

A. In this specific area here, you mean?

Q. Yes; yes.

Mr. DeGarmo: Just a minute, Mr. Knack. I wish at this time, if your Honor please, I don't know just where this is going, this line of examination, but in order that I may not be in a position of having waived it, I wish at this time to object to the question which has been asked upon the ground that it is entirely incompetent and irrelevant and is not raised by any issues in the pleadings in this case.

Mr. Etter: Well counsel, of course, has inquired at some length about the delegation of authority of bargaining to the Heavy Highway Chapter. There may be a question here about the extent of the bargaining of the Heavy Highway Chapter and whether the extent of their bargaining goes to the particular job that as a result of which this strike was called.

The Court: I will overrule it.

Mr. DeGarmo: That, of course, goes to the question of whether they have raised any such issue by the pleadings.

Mr. Etter: You entered into it yourself by asserting your right to bring this action and liability under this contract. [284]



(Testimony of Lee Knack.)

Mr. DeGarmo: I don't care to argue it. I wish the record to show my objection.

The Court: The record will show your objection. You need not repeat it, Mr. DeGarmo, the record will show.

(Whereupon, the Reporter read back the last question.)

A. We are not members of the Building Chapter.

Q. You were not in 1955? A. No.

Q. You have not been since 1955?

A. No, sir.

Q. And have you at any time during any work that you know of that M-K has performed at Hanford? I think they had some work back there in 1947? You may not know. If you don't—

A. I don't know.

Q. You don't?

A. I mean I have heard so, but I don't know.

Q. So that with reference, the reference to membership is the membership of Heavy Highway Chapter? A. That is right.

Q. Now when you joined the Heavy Highway Chapter did you have any understanding as to the extent of the coverage or jurisdiction in work or otherwise [285] of the Heavy Highway Chapter?

A. What do you mean by the work?

Q. What did it include? Did it include building contruction? I notice they call it Heavy Highway. Just what division of jurisdiction was exercised by



(Testimony of Lee Knack.)

Heavy Highway as compared with the Building Construction Chapter?

A. Well certainly, I was familiar with what the Heavy Highway Chapter work covers in that Morrison-Knudsen Co. belongs to many Heavy and Highway Chapters in the United States and the work that is known as Heavy and Highway Construction Work is pretty much the same throughout the geography of the United States, and therefore, I would know what the Heavy and Highway work was by explicit references in the agreement itself, and also by knowledge of what Heavy and Highway construction is and the Associated General Contractors' relationship to it in Heavy and Highway Chapters throughout the United States.

Q. Well I am trying to determine possibly what, if you can tell me, what the division in the jurisdiction of the Heavy Highway Chapter and the Building Construction Chapter, I mean you have elected to join the Heavy Highway. I'd like to know the division in that jurisdiction? [286]

A. Well, the Heavy and Highway Construction work and certainly I am not able to recite all of the Heavy and Highway provisions and conditions——

Q. No, I know.

A. But Heavy and Highway Construction applies to dams, bridges, revetments, dykes, levees, flood projects, irrigation projects, hydroelectric development projects, pumping stations, athletic fields, streets, curbs and gutters, paving, underpasses, overpasses, bridges, wharves, jetties, levees, airports. Of



(Testimony of Lee Knack.)

course, as you take the divisions of projects down such as I mentioned, a hydroelectric development project, that would include the construction of a powerhouse, it would include the construction of the dam, it would include the, possibly construction of transmission lines that might be connected thereto, there could be what some people might consider buildings, offices, warehouses and so forth that are associated with that type of project; again in the building of an airport the same thing would apply to where the divisions or subdivisions of such a thing such as was commonly known as terminal facilities, which are the oil and water facilities in connection with an airport and so forth.

Q. I assume that other than that by description, [287] in other words, strictly a construction, industry building construction, that is buildings and maybe residences and otherwise that would be constructed. Have I got that right?

A. It would be building construction.

Q. In other words, probably and generally most of the construction items excluded by your statement of jurisdiction of the heavy were maybe some exceptions?

A. Well of course I think, sir, you are asking me to define a question of jurisdiction as to what constitutes Heavy and Highway by exclusion, and it most appropriately is done by inclusion. In other words, building and—I speak now in terms of what is customarily thought of across the country—build-



(Testimony of Lee Knack.)

ing construction is considered residential and commercial types of buildings that are used for shelter and that sort of thing. And customarily all work outside of that or beyond that is considered to be heavy and highway and engineering construction.

Q. Now you say, I think, that you joined AGC in February, that is Heavy Highway, in 1955?

A. Yes.

Q. Now, at that time you were aware that there was in effect an agreement between the Associated General Contractors of America as Heavy Highway Chapter [288] and the various Unions including those Unions who are defendants in this present case?

A. Yes.

Q. There was in existence—You have seen that agreement, have you not?

A. Yes.

The Clerk: Defendants' 4 marked for identification.

(Defendants' Exhibit No. 4 marked for identification.)

Q. I don't know, Mr. Knack, when you might have had the opportunity to see this agreement the last time and this inscription in ink here is somebody else's, but you will note that here it is and if you can examine it and if you can or are in a position to identify it as being an exact agreement copy of that 1955 contract?

A. Yes, that was the agreement that was in effect.

Mr. Carey: What is the date?



(Testimony of Lee Knack.)

Q. Again Mr. Knack?

A. That was the agreement that was in effect at the time that we became members of the AGC.

Mr. Etter: You mean the exhibit number?

Mr. Carey: The date of the contract. I have the exhibit number.

Mr. Etter: The date of the contract is September of 1950 extending to December of 1955.

Q. But this is the contract, is it not?

A. Yes.

Q. And after you joined, or after you became a member of the Associated General Contractors I gather from what you said, that you then informed or at least performed in your respective capacities and construction in accord with that agreement?

A. With the exception of the Chief Joseph powerhouse.

Q. With the exception of the Chief Joseph powerhouse? A. That is correct.

Q. As I understand, you had a project arrangement prior to this time at Chief Joseph so that you were able to continue that and whatever terms it might have been, but in all other respects you conformed at that time, and upon becoming a member of AGC, with this agreement then in force?

A. That is correct, sir.

Q. Is that correct? A. Yes, sir.

Q. Now, during the time that this agreement was [290] in force, that is from 1950 to 1955—

Mr. Etter: Possibly I had better offer this,



(Testimony of Lee Knack.)

your Honor, for the purpose—I don't know whether Mr. DeGarmo is familiar——

Mr. DeGarmo: I have seen it.

Mr. Etter: I'd like to offer it at this time, your Honor.

Mr. DeGarmo: Again I am a little at sea as to where counsel is going and I hardly know on what ground to object except it seems to me that we are getting beyond any issue in the case and we are going back now into an area antedating and preceding the particular time that is involved in this litigation which is the year 1956.

We were operating under '56, '57, '58 contract and the strike took place in March of 1956, and I am unable, unless counsel can point out, to see any probative value to the 1955 contract.

Mr. Etter: Well, I would like to show, if it is permissible, that in view of your inquiry, counsel, that whether or not it is the fact, that Morrison-Knudsen has complied at all times and in all respects with the AGC contract as Mr. Knack has testified up to and through the strike and after the strike until they completed the job. The [291] statement has been made that they complied strictly with this contract.

Mr. DeGarmo: If you are attempting to impeach the witness——

Mr. Etter: No, no; I just want to inquire. A few things I am concerned with here.

The Court: I will overrule your objection. It will be admitted. May I see that one please?



(Testimony of Lee Knack.)

(Defendants' Exhibit No. 4 admitted in evidence, attached hereto and made a part hereof.)

Q. Now, that contract by its terms would have expired, as I read it, on December 31st of 1955?

A. Yes, I believe that is right.

Q. Now, did you perform, can you tell me what work, if any, you performed in the State of Washington, or at least under the jurisdiction of the eastern Washington, northern Idaho Heavy Highway agreement, what work you performed other than the Chief Joseph dam and after you became a member and subject to the contract which is Exhibit No. 4?

A. Well, there was some work that we were doing at Fairchild Air Force Base out here. I am not sure of the dates that we started the construction of the bridge here in town, but I think that it was after [292] that. I mean it is difficult for me to keep dates of all the various jobs around the country. But there conceivably could have been some miscellaneous work in either north Idaho or in the eastern Washington area that we may have performed at that time or different times in the area.

Q. Well now, can you tell me whether or not, Mr. Knack, if you remember whether you did any work in what is known as the Hanford Engineer Works, if you performed any work there in the



(Testimony of Lee Knack.)

year 1955 in accord with the contract which I have submitted as Exhibit No. 4?

A. The only work that we performed at Hanford was the contract that we were awarded in November of 1955 at Hanford Works.

Q. Yes. Now, to get that, as I gather the complaint—of course you didn't draw it and you are probably not bound by it—I am going to ask you a question or two about it. As I understand the complaint, you were awarded that contract somewhere about November 24th of 1955?

A. November 25th.

Q. November the 25th. And that contract, as I understand it, is the contract, construction contract which Mr. DeGarmo has submitted as being Exhibit No. 1, [293] which I believe you examined? Is that correct?

A. Yes.

Q. Now, can you tell me at that time, Mr. Knack, when did Morrison-Knudsen Co. actually commence any work under that contract which has been marked as Exhibit No. 1?

A. The exact date I couldn't tell you, sir. I imagine that we began to employ people on our payroll in relation to this contract either the latter part of November or the first part of December.

Q. I see. Do you know actually whether any of the construction work which is indicated, and I gather from a brief description that I find in the forepart of the contract refers to pumping plant addition, 100-F area; pumping plant addition, 100-H area; office addition and modification of vent rooms.



(Testimony of Lee Knack.)

100-D area; office addition and modification of vent rooms, 100-D area; office addition and modification of vent rooms, 100-F area.

Do you know whether any of the actual work as to any of that construction was performed in 1955? That is, of November or December?

A. To say that I actually know, I couldn't say, sir, because I didn't see the work and I was——

Q. You didn't see it?

A. Wasn't on the site; no, sir. [294]

Q. So it might have been in 1955 or the actual construction work might have been early in 1956? It could have been either way as I understand it?

A. Again, of course referring back to memory and the times that jobs start and when people go on a payroll, I might be not sure of them because ordinarily I am not directly on the sites themselves and therefore I wouldn't know whether it was, the work actually commenced in the fall, in November or December of 1955, or whether it actually commenced in January. I am sorry, I can't help you on that.

Q. I see. Now, I notice in the contract, the original No. 1 of which has been admitted, I have a copy here that I have been using, that under Part IV and pointing definitely to page TC4——

A. Yes.

Q. (Continuing): ——it recites "Wage rates and allowances" and then it refers to Section 1, Section 2, Section 3, and Section 1, "Wage rates for manual construction workers as determined by



(Testimony of Lee Knack.)

the Commission to be prevailing at the Hanford site." Section 2, "Allowances for manual construction workers as determined by the Commission to be prevailing at the Hanford site." Section 3, "Minimum wage rates to be paid under the contract as determined by the [295] Secretary of Labor pursuant to the Davis-Bacon Act." A. Yes.

Q. Do you see those three, Mr. Knack?

A. Yes, sir.

Q. Now, I have specific reference to Section 2, the allowances for manual construction workers as determined by the Commission to be prevailing at the Hanford site. Could you tell me what that means?

A. I can only give you an interpretation of what it would mean.

Q. Alright, if you please?

A. The Hanford agreement itself contains certain provisions that might be called allowances. I think one of the phrases was "isolation allowance" or "isolation pay" and under the provisions of our obligation of the contract to abide by the Hanford Works Agreement, such an allowance, such allowances would be obligatory on our part while that Hanford Works Agreement was in effect by virtue of the contract itself.

Q. In other words, this Section 2 you interpret—You knew as a matter of fact that those allowances consisted of, as you say, of allowances that had been made under what was known as the Hanford Agreement, isn't that correct? [296]



(Testimony of Lee Knack.)

A. Yes.

Q. And you knew too, did you not, that the Hanford Agreement was an agreement that existed between contractors who had AGC contracts on the Hanford project with all Unions who were working on the Hanford project, did you not?

A. I knew that it had so existed at one time, but I also knew that in subsequent periods that some of the Unions that had been signatory to the Hanford Works Agreement were no longer signatory to it.

Q. Yes, but you knew that there was a special Hanford Agreement, isn't that correct?

A. Yes, sir; I did.

Q. And that it had been in effect in the Hanford area, isn't that right?

A. Yes.

Q. And that that area agreement was absolutely distinct and apart from the AGC agreement?

A. I am sorry, sir, I don't know what you mean by distinct and apart.

Q. Well, you knew that there was an agreement at Hanford that was not the AGC agreement which you were operating under, isn't that right?

Mr. DeGarmo: If your Honor please, in order that we won't get into an argument later about my sitting [297] by and letting this evidence in, I am now objecting to this evidence upon the ground that they are attempting to go right behind the ruling which your Honor made excluding oral evidence as to the 1956-1958 agreement. I don't know what other purpose this can be offered for.



(Testimony of Lee Knack.)

I myself introduced into evidence the contract which states that we will abide by that Hanford Works Agreement as long as it is in effect. It is an admitted fact by admission in this case that the Hanford Works Agreement was terminated December 31, 1955. It was not in effect at any time during 1956 and that is admitted. Now, I don't know what other purpose they can have at this time by this testimony.

Mr. Etter: Well, it will certainly develop, your Honor, from their own contract that they agreed to be bound by the Hanford Agreement and were bound by the Hanford Agreement. Now, the question of whether or not there was any—well, the question of whether or not there was any breach so far as these Unions were concerned, of your AGC agreement, to me depend not only on the foundation here but on further examination that I am going to make of Mr. Knack as to his own conversations with these Unions before the men went to work, not in '55 but in 1956, in accord [298] with this statement that appears right here.

Mr. DeGarmo: If your Honor please, I think the parties are bound by the admissions. That is the purpose of them. We served a request that they admit that, as of December 31, 1955, the Hanford Works Agreement was terminated by notice in accordance with its terms. They have admitted that. The only qualification that they made to it was that there were some negotiations carried on after that, but they don't claim that those negotiations re-



(Testimony of Lee Knack.)

sulted in any contract. Therefore, as far as our contract was concerned, it states that we are bound by it only as long as it is in effect and it is admitted it ceased to exist December 31, 1955.

Mr. Etter: I am not concerned with negotiations that counsel, I believe, assumes I am talking about, and that is the matter of these different things that they argued about preceding the strike. I am now talking about negotiations that were entered into and consummated before these men went on the job in 1956 on this very project in accord with these Hanford allowances and with the acquiescence of Mr. Knack himself. Now, that is what I want to show. It happened five days after he says the contract was terminated. [299]

Mr. DeGarmo: That is the purpose I object to, upon the ground it is not plead, an affirmative defense not plead. They are relying on some agreement other than is presented by the pleadings. They must plead it.

Mr. Etter: It goes to the extent of the liability that you claim, counsel. You are on your proof now to prove that liability extended as against these unions up to the time of what he claims is a breach. Now, these people have walked in there and signed a contract, paid no attention to it themselves, how can they come in here and rely on this contract to sue us for a breach of contract?

Mr. DeGarmo: I submit, if your Honor please, if they are relying upon some attempt they claim we



(Testimony of Lee Knack.)

made, they must plead that agreement. It is not a part of our case. It is a part of the defense.

Mr. Etter: We are depending on your reliance, not on your AGC agreement at all which you now insist is what governs it.

The Court: We will recess for ten minutes.

(Whereupon, at three-five o'clock p.m. a recess was had until three-twenty o'clock p.m., at which time all parties and counsel being present, the following [300] proceedings were had, to wit:)

(Witness Knack resumed the stand for continued cross-examination by Mr. Etter.)

Mr. Etter: This might have been a little unfair to the Court in objecting to making statements, and I don't want to be, and I'm sure counsel doesn't, but I notice counsel referred to, so the Court will understand this, I think counsel will go along with me, referred—counsel takes the position the termination so-called of any Hanford Agreement, without assuming that counsel concedes any, but assuming that there was, counsel is of the position it was terminated by notice which was attached to an admission of counsel's which admissions, as I understand it, are in your Honor's file.

Now, the particular one that I have in front of me attached to the notice of the so-called termination, your Honor, will be found in a document entitled "Plaintiff's Requests for Admissions under



(Testimony of Lee Knack.)

Rule 36," which I think was filed on about the 17th of January of 1957, but it is "Plaintiff's Requests for Admissions under Rule 36" and the issue here as I see it concerns itself with the request, the several [301] last requests for admissions, one of them being indicated by an exhibit which is attached under the photo copies of Exhibits A to E, and which is entitled Exhibit F, and that is a letter dated December 29, 1955, signed by Kenneth McCaffery, Executive Secretary, in which he says that (Reading):

"The Hanford contractors negotiating committee on behalf of those contractors signatory to the Construction Collective Bargaining Agreement Hanford Works, and in accordance with its letter of October 28, 1955, is exercising the right to terminate the agreement and is hereby terminating said agreement on December 31, 1955. Then the Hanford contractors will not stop work on the project as of January 1, 1956. The contractors will maintain wages and conditions in effect on December 31, 1955, until a new agreement or agreements between the contractors and the Unions involved can be completed. The contractors, however, are not proposing, nor do they intend that any particular condition in effect between December 31, 1955, and the time a [302] new agreement or agreements are negotiated with respect to Unions would necessarily be a part of the new agreement or agreements. The wage policy of the project will remain unchanged. In accordance with past practices the committee is will-



(Testimony of Lee Knack.)

ing to accept these wage scales and effective dates which currently have been negotiated by particular craft or crafts and the association with which those Unions normally negotiate and which are prevailing in the area surrounding the project. These wages can be placed into effect as soon as agreements are completed between the Hanford contractors and the respective Union or Unions. The Hanford contractors are willing to meet, as agreed, with——”

And so on.

Now, I assume the admission of the authenticity of that document is what counsel argues is a termination notice and thereby cuts off all relations, as I gather, so far as the claimed liability here under the AGC contract which counsel has in evidence and [303] which was negotiated. Of course my position is entirely contrary. They might have said they were terminating the agreement, but they say they will continue work under all conditions until they negotiate a new contract. That is the Hanford committee on the Hanford Works.

As I see it, M-K, from what Mr. Knack has said, were obliged under the AGC contract to the Hanford Collective Bargaining Agency, which is not terminated so far as the maintenance and conditions are concerned, and yet at the same time claims now that the contract sued upon here is exclusive as governing the relations in Hanford Works.

Mr. DeGarmo: In order that my position may



(Testimony of Lee Knack.)

be made clear both to the Court and to counsel, I wish to state first that it is not conceded, in fact it is denied that the Hanford contractors negotiating committee of which Mr. Kenneth M. McCaffery was Executive Secretary, had any agency or other relationship with Morrison-Knudsen Co., Inc. We had never been a party to the agreement. We were not represented by it in any way, and any letter or statements that they made in the letter which counsel has called to your Honor's attention, as far as we were concerned, was not within our, any authority granted by us, and was not made for [304] us.

The only reason the letter was presented was because it was a notice by which the Hanford Works Agreement—and if you will refer to the contract with the government, our agreement was to abide by the terms of the Hanford Works Agreement entered into by the Hanford contractors negotiating committee, but the Hanford Works Agreement, that this letter terminated it.

Now counsel, I know, has overlooked temporarily at least, this further answer by the plaintiff, or by the defendants to the request for admissions. In our original request for admissions No. 13, we asked them to admit that at no time since January 1, 1956, has there been in force and effect any agreement providing for the payment of, by plaintiff or by the terms of which plaintiff was obligated to make or pay contributions towards the health and welfare of any of the defendants, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Help-



(Testimony of Lee Knack.)

ers of America, Local No. 839; Joint Council of Teamsters No. 28, or Western Conference of Teamsters other than the agreement which was attached to the original complaint herein as Exhibit A.

Now, in answer to that this is their answer. [305] They say (Reading):

“Answering request 13, Defendants, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local No. 839, Joint Council of Teamsters No. 28, or Western Conference of Teamsters, admit that the contract in force prior to January 1, 1956, and applicable to the Hanford area, was canceled as of December 31, 1955, by notice given by the Hanford contractors negotiating committee through Kenneth M. McCaffery, its Executive Secretary, and that no substitute contract became effective relative to said area between January 1, 1956, and the date of the work stoppage referred to in the plaintiff’s amended complaint, and these defendants deny that the contract attached to plaintiff’s amended complaint as Exhibit A, had or has any application to the work to be performed within the Hanford area.”

Now, Mr. Etter was one of the parties to these admissions and my objection was that they are attempting now to [306] rely apparently upon some alleged oral statement or agreement which they claim was made at some pre-job conference and they have not alleged any such agreement as a defense in this action, nor have they in their request



(Testimony of Lee Knack.)

for admissions reserved any such agreement. In fact, they say to the contrary that there was no substitute agreement, and I think that they should not be permitted to show such an agreement or attempt to show it without at least having pleaded it.

Mr. Etter: I should like to show your Honor that now in view of what we both said, I should like to show that as far as Morrison-Knudsen was concerned, that after it signed or after the AGC executed the so-called contract in November, or rather December, I think it was, November, I guess it was, of 1955, that they proceeded to work on the project not in accord with the AGC contract at all, but in accord with the Hanford negotiating contractors, Hanford Agreement that they proceeded to work under that agreement, never did work under the AGC contract at Hanford.

In other words, after they signed the agreement they didn't say, we have an AGC contract now and here is what you fellows are going to do. We have a new contract with you down here, and they claim they have a [307] new contract down there a month before they terminate the Hanford Agreement, and yet after that they proceed to work under the same agreement that Mr. McCaffery refers to here and under the same conditions that Mr. McCaffery refers to.

They never did exercise what he says is a—my point is, if they, themselves, didn't recognize after this contract was negotiated AGC, any liability as



(Testimony of Lee Knack.)

far as these people and proceeded under another contract, how can they reverse themselves now and assert that there is liability under this contract? I mean, they can't waive even assuming that they intended it to apply to Hanford, they can't waive that and proceed under the Hanford contract and then come in and say this was the one that was breached.

That is my position. That is what I am attempting to show through Mr. Knack who handled all the negotiations.

Mr. DeGarmo: Whatever is the affirmative defense has not been pleaded.

Mr. Carey: May I, your Honor, I am confused about just what the state of the record is about these demands and answers. I don't know whether your Honor has gone through this voluminous file. After the pleadings were made up, and I am referring now to [308] the amended complaint and the answer, we served demands for admissions under Rule 36. Those were answered. They are in the files. The plaintiff then served some demands for admissions on the defendants. We answered those and those are in the file.

Subsequently and quite recently we served some supplemental demands for admissions and they answered those, and they in turn served some supplemental requests and we answered them, so that there are four sets of demands and answers that I assume are on file. If they are not on file it is Mr.



(Testimony of Lee Knack.)

Etter's fault because I sent them to him and asked him to file them.

Now, the question is, under your Honor's practice, those being on file are they considered a part of the record or are we under the necessity of reading the demands, or I think we ought to have some understanding about it because reference is going to be made to them continuously.

Mr. DeGarmo has already referred to these demands and answers and so has Mr. Etter.

The Court: I think that the request for admissions and the answers to them are in the same status as the pleadings. That is supposed to set up that fact without the necessity of offering [309] proof regarding it, and the same thing, I think is true here. If the requests are in the file and the answer is there, it is before the Court and can be considered on counsel's calling it to the Court's attention the same as you would the admissions in the pleadings. It isn't necessary to put your pleadings in evidence.

Mr. Carey: It is agreeable to me if it is agreeable with Mr. DeGarmo and Mr. Etter.

The Court: These requests and answers are in the file and binding on the parties making admissions.

Mr. DeGarmo: I have had that question up before and I find the Courts are not uniform on their ruling because there is no rule on the subject.

The Court: No, the rule doesn't cover. It is a matter of local practice.



(Testimony of Lee Knack.)

Mr. DeGarmo: Local Court rule apparently!

Mr. Carey: Well, I suppose we can, whatever the rule be elsewhere, I suppose we can agree, if we can agree.

The Court: I have no objection to your reading them into the record or having them copied into the record if you wish, but that hasn't been my practice to do that here. I have just left them [310] as I would the pleadings in the file, and they are there for what they show and for what they are worth.

Mr. Carey: May I make this further inquiry then. I don't suppose your Honor has had the opportunity to read these in detail?

The Court: No, I haven't.

Mr. Carey: Because I anticipate that it has already developed that objections will be made on the basis of what are in these and I don't see how your Honor can very intelligently rule on any objections if you don't know what—

The Court: Well, I think in the particular instance where they are used as a basis of objection, or counsel wants to use them as a basis for a factual foundation for some argument, that they should be specifically called to the Court's attention.

Mr. Carey: Anyway, the present situation as I understand it, they are regarded as part of the record as if they had been read?

The Court: Yes.

Mr. Carey: In detail.

Mr. Etter: That is agreeable to the Engineers.



(Testimony of Lee Knack.)

Mr. Carey: That clears it up.

The Court: Well I think that counsel will be permitted to show, if he can, or inquire at [311] least along the line of showing that this contract which, or these contracts, rather, which are in evidence as Plaintiff's 2 and 3, were not actually used or applied to Hanford Works which is the basis of this suit.

Mr. Carey: Yes, that is the point.

Mr. DeGarmo: May I have a continuing objection?

The Court: Yes, the record may show you have a continuing objection without repeating each time.

(Whereupon, the Reporter read back the last question on cross-examination by Mr. Etter.)

Mr. DeGarmo: I'd like to have the time, about whether we are talking about '55, or '56?

Mr. Etter: 1955.

A. Yes, I knew there was a Hanford Works Agreement.

Q. In 1955? A. In 1955, yes.

Q. And you knew too, did you not, that there was a Hanford Works Agreement then in effect when you, when your company bid this particular job that is described and set out in Exhibit No. 1?

A. Yes. [312]

Q. And as a matter of fact, M-K was well aware there had been a Hanford job agreement for many, many years prior to the time that this was bid,



(Testimony of Lee Knack.)

isn't that true?

A. I don't know what you mean by many, many years, sir.

Q. Well, you knew it all the time that you had been in the Labor Relations Department of Morrison-Knudsen, did you not?

A. Well, I knew that the Hanford Agreement, as such, had come into existence, I believe, in the later summer, was completed in 1952, so that would have been between the time that we bid the job and the time that that work agreement was in effect was three years and I was curious as to what many, many years might mean in relation to three years.

Q. You knew then three years then, is that not correct?

A. Yes, that is correct.

Q. As you indicated, Section 2, Allowances on TC4, Exhibit 1, had reference to factors in this Hanford Agreement as to isolation pay and transportation?

A. I said I interpreted them as such, yes.

Q. You were a party to the AGC contract which is [313] in evidence between the plaintiff and the defendant Teamsters and Engineers?

A. Yes.

Q. You, as I understand it, you were parties to that agreement having joined AGC?

A. Yes.

Q. And as I recall it, those agreements, checking now to make sure with the complaint, I believe that the agreement with the defendant Teamsters was negotiated and entered into on December 19th of 1955? I am referring now to the AGC agreement.



(Testimony of Lee Knack.)

A. Yes.

Q. And that the agreement which is attached as Exhibit B was negotiated and entered into with the Engineers No. 370, defendants, under date of December 24, 1955?

A. Yes.

Q. That is right. Now, when you entered into those agreements or rather, when AGC Heavy Highway entered into those agreements you were then aware however, you were still aware of the Hanford Agreement which was in effect, were you not?

A. Yes.

Q. Alright. Were you aware that on December 29th of 1955, a Mr. Kenneth McCaffery, who purported [314] to be the Executive Secretary of the Hanford contractors negotiating committee sent a letter that has been read here dated December 29th of 1955, to certain Unions who had work or prospective work or were working on Hanford including these defendant Teamsters here and Engineers?

A. I didn't know it at that specific date. I knew it subsequently.

Q. When did you first learn of it?

A. To know that it had actually been sent I think it was on the 4th day of January, 1956, that I knew of it.

Q. On the 4th day of January, 1956?

A. Yes.

Q. Now, do you recall whether or not you, along with Mr. Reed, who I believe is a project manager for M-K, attended a pre-job conference meeting



(Testimony of Lee Knack.)

with a number of labor representatives in Pasco, Washington?      A. Yes, sir.

Q. And do you recall the date of that meeting?

A. Yes, I do. As a matter of fact, on that particular date I was in attendance in two meetings that involved certain labor representatives. One of them was at the AGC offices and the other in [315] the morning of the 5th of January and the other was at Pasco at the Labor Temple on the afternoon of January the 5th.

Q. That was correct, it was January 5th of 1956, was it not?      A. Yes.

Q. And in attendance at that meeting besides you and Mr. Reed there were representatives of various craft unions and including representatives of the defendants here, that is the Teamsters and the Operating Engineers?

A. I recollect that there was a representative of the Operating Engineers. I don't specifically recollect whether or not there was a representative of the Teamsters. There very easily could have been without my recollection because as I recall there were perhaps fifteen or twenty various representatives.

Q. There were approximately fifteen, were there not?

A. Somewhere in that neighborhood; yes, sir.

Q. Do you recall that Mr. William Dunn, who was a business representative of the Engineers was the Chairman of the meeting?      A. Yes.

Q. That is right. You are also acquainted, are



(Testimony of Lee Knack.)

you, [316] with Mr. Charles Knapp who is seated over there on my right?      A. Yes.

Q. And who has acted down there for the Building Trades Section for many, many years I understand?      A. Yes.

Q. Now, do you recall a conversation that you held with Mr. Knapp and with these other men and in their presence near the conclusion of that meeting at which you discussed the Hanford Works Agreement and particularly the isolation pay and the transportation provisions of the Hanford Agreement—

Mr. DeGarmo: I wish again, your Honor, in order to make the record very specific, I object to this question upon the ground that they are now attempting to prove some oral agreement outside of the written agreements, Exhibits 2 and 3, and not having pleaded or relied upon it in the pleadings in this case.

The Court: I will overrule the objection.

A. The question of the Hanford Agreement and the status of the Hanford Agreement came up for discussion in both of the meetings which I attended that day.

Q. I am not concerned at this time with [317] the meeting—was it the AGC?

A. In the AGC offices with the Union representatives and other contractors.

Q. I'd like you first to have recollection of your discussion about the Hanford Works Agreement at the meeting in the Labor Temple with the men that



(Testimony of Lee Knack.)

I have referred to or described, on the afternoon of the 5th of January.

A. Yes, I recollect that discussion.

Q. And will you tell us what that was?

A. Well, the events leading up to the discussion itself were associated to some degree with the discussions that had occurred in the morning.

Q. I see.

A. And it is difficult to have the one discussion that occurred in the afternoon explained without the association with the morning discussion because some of the people who were in the afternoon meeting were not present at the morning discussion, and some were present at both the meetings. At the meeting in the morning the question of status of the Hanford Works Agreement was being discussed. We were, both Mr. Reed and myself were asked to sit in on those meetings merely to be conversant with what the conditions and circumstances were that prevailed at the [318] moment. I had actually come to Hanford as a part of a request that had been given to Mr. Reed by the Building Trade Council for pre-job conference. Therefore, I was there for that purpose and the meeting in the morning was being held. In the morning meeting the Hanford committee, at least it was what I took to be the Hanford committee, was talking with the Union representatives and the question came up as to the status of the Hanford Agreement, and I was not familiar, or wasn't certain just where it did stand as it appears that some of the people in the



(Testimony of Lee Knack.)

room wasn't too sure about it. And I remember very definitely stating that in so far as Morrison-Knudsen Co., Inc., was concerned, that we were in the meeting as observers only, that we were not being represented by the Hanford committee, that we did have an agreement with the crafts who had signed with the AGC up to that moment and we considered that agreement to be in effect.

We certainly recognized it as being binding upon us and we considered that it was binding upon those parties who had also consummated the agreement with the AGC.

Now, in that morning's meeting there was a considerable discussion between the Unions and [319] the contractors apparently the Hanford negotiating committee as to the status of the notification of termination, as to actually when was it going to terminate, were there going to be future meetings. References and discussions were made pertaining to some continuance of conditions that existed under the Hanford Agreement, so that actually to one who was not fully conversant and hadn't been sitting in prior meetings, it was impossible to tell whether or not the Hanford Agreement from a practical or application standpoint was totally and completely terminated.

Subsequently, in the afternoon, we attended the meeting in Pasco. A considerable portion of that meeting was taken to describe the type of work we were involved in, questions by the Unions as to which subcontractors and the names of subcon-



(Testimony of Lee Knack.)

tractors which we might be using on the project, the method and procedure that we would follow in dealing with the Unions, and not from a contractual standpoint but from a day to day standpoint, the possible discussions over judicial problems that might arise on the job, and so forth. The general type of discussion which occurs at a pre-job conference.

Now, I was asked the question, as I recollect, in that afternoon meeting specifically what was [320] Morrison-Knudsen Co. going to do. And I pointed out again, as I had in the morning meeting, that we did have agreements with certain crafts by virtue of the agreements through the AGC which was our bargaining agent and which we recognized and honored such agreements.

The question came up as to the circumstance involving the issues at stake, primarily this travel time, the isolation pay and so forth. And I indicated that because of the area which still had to be explored, which was obvious that there may be some continuing meetings and because there was no apparent immediate crisis involved, that certainly Morrison-Knudsen Co., Inc., was not in any position to be pushed by the Unions, by the line, so to speak, and that we were not going to make a commitment one way or another in view of our contract until a definite determination had been made in relation to the conditions involving the Hanford Works Agreement.

Now, at the time that, on January 4th, which was



(Testimony of Lee Knack.)

the day preceding the meeting that I had learned somewhat of the communications that had been sent around, the one you referred to specifically, Mr. McCaffery, the questions of the technical termination, the questions of the relationships henceforth [321] between the Unions and the Hanford contract or committee, was definitely one that was up in the air at the time that we had our meeting on the 5th of January and I think I was very explicit in pointing out that certainly we could not be expected to become "the tail that would wag the dog" nor could we be expected, as I said before, to be put in it by the line of the circumstances, and certainly there were certain factors that had to be gone through there. And therefore, we could not usurp.

Q. Do you know Mr. Knapp who is seated over here?      A. Yes, I do.

Q. Do you remember that at that meeting he directed the specific question to you after explaining that there was talk and that there was difficulty as you have indicated about this Hanford contract and that there was talk of attempting to withdraw certain provisions of that agreement that did not apply outside the barrier, and he named them particularly, isolation pay and transportation, and he asked you what would be your position with respect to those provisions in the Hanford Agreement, and that you said to him, "We intend to go along with those provisions of the agreement and we are going to pay the isolation [322] pay and not



(Testimony of Lee Knack.)

only that, but we are going to provide the transportation''?

A. No, I don't recollect that as a specific situation at all as a question being put to me.

Q. Do you recognize anything about that that now recalls to your recollection that there was any discussion about the matter of those provisions of the Hanford Agreement at that meeting with Mr. Knapp and these other men there?

A. There was a question as to whether or not, whether the isolation pay and some of the other provisions, the transportation provision, the two, in the Hanford Works Agreement was going to be continued or discontinued, and certainly that was something that I couldn't put a time limit or a date limit on because I didn't know and was not affected or a part of the Hanford negotiating committee.

Q. Didn't you say though that you were going to, you were going along with that Hanford Agreement and pay the isolation pay and pay the transportation regardless of what?

A. No, I think specifically, sir, I made reference to the fact that under the terms of our agreement we were obligated to live under the Hanford Agreement until it ceased to exist and at the [323] current moment there wasn't anybody who could say when that was going to cease to exist as conditions prevailing and certainly, I was in no position to be the party in the face of several contractors and other people involved in there.



(Testimony of Lee Knack.)

Q. Then you did say that you would be bound by the Hanford Agreement until it ceased to exist, did you not?

A. By virtue of our contract; yes, sir.

Q. Which contract is that?

A. By virtue of our contract with the Atomic Energy Commission.

Q. In other words, you recognized the existence of the Hanford Agreement?

A. Until it ceased to exist.

Q. Until it ceased to exist?

A. Finally and completely, yes.

Q. And on January 5th when you had this meeting as far as you were concerned it had not ceased to exist, had it?

A. As far as I was concerned in official capacity basis certainly I had not had any indication that it had ceased to exist, no. It was a moot question.

Q. Now, as a matter of fact, did you not commence [324] your work on the project immediately after that?

A. We had commenced prior to that time, sir. We had actually employed before that.

Q. Is it not the fact that you provided isolation pay during the time and up until March the 2nd, 22nd, and isn't it a fact that you also paid bus transportation, furnished bus transportation to both of the defendant Unions in accord with those provisions which were in the Hanford Agreement?

A. Yes, sir.



(Testimony of Lee Knack.)

Q. That is right. And neither one of those provisions was in the AGC agreement, isn't that right?

A. No, sir. Well, now, there was a provision in the AGC agreement providing for travel time; yes, sir.

Q. I know, but I am talking about—well, there wasn't one for isolation pay?

A. Not as such, no.

Q. Not as such. Now isolation pay was a peculiarity and a specific of the Hanford contract, was it not?

A. Yes, sir.

Q. And the two elements that they were concerned with, even though AGC might have had a comparable one in their contract, was the transportation and was [325] the isolation pay?

A. That is correct.

Q. And you continued to provide those as you have said?

A. Yes, sir.

Q. Now, of course at the commencement of, I mean beginning with January the 1st you then had a contract, or rather you were then a member of the Associated General Contractors Heavy Highway and Construction Division, were you not?

A. Yes, sir.

Q. And commencing on January the 1st as I understand this contract, it became effective on January 1st, is that right?

A. Yes, sir.

Q. Did you at any time after January the 1st advise any of the defendant Unions here or any other Union that might have been working for you, that you were now working under the Hanford, or rather under the AGC agreement and that you did



(Testimony of Lee Knack.)

not recognize the existence of a separate Hanford Agreement that applied to the Hanford project?

A. I think that we did give notification to that effect shortly after the work stoppage occurred; yes, sir. [326]

Q. I mean prior to the work stoppage did you give notice of that?

A. You hadn't mentioned that before.

Q. Yes, prior to the work stoppage did you say anything to any of these defendants that they were now under the AGC contract which did not provide for isolation pay?

Mr. DeGarmo: I'd like to have the question, Mr. Etter, in order that I may understand the answer of the witness. When you say "you" are you speaking about "you, Mr. Knack" or are you speaking about Morrison-Knudsen Co.?

Mr. Etter: I am referring to M-K. I understand he was Director of their Labor Relations.

Mr. DeGarmo: I just want to be sure Mr. Knack understands that when you say "you" he is talking not about Mr. Knack but about everybody in Morrison-Knudsen Co.

Mr. Etter: Not everybody, somebody with authority, and I assume being an expert he would know what was going on in the Labor Relations.

Mr. DeGarmo: A corporation does not act through one individual.

Mr. Carey: My observation, your Honor, is that the witness is quite intelligent. He [327] understood the question.



(Testimony of Lee Knack.)

The Court: Proceed.

Q. In other words, I am not, so we understand each other and Mr. DeGarmo understands, I am not saying "you" on each of these occasions probably do every one of these things, but I am talking about your company and I understood you had quite a bit of authority as Labor Relations man to handle their problems, is that right?

A. Yes, sir. However, you see when we assign our bargaining rights to an association, when matters of this nature come up we don't take off on our own. We recognize the bargaining factors and frankly, when the situation becomes embroiled as it did, it was our bargaining agents that acted in our behalf in relation to this matter.

Q. Yes. Well fine, and dandy. But nevertheless, do you know whether or not anybody from Morrison-Knudsen, you or anybody else with any authority ever advised these unions by any communication, oral or otherwise, that you were proceeding under the AGC Agreement and that it applied to the Hanford project, did you ever do that?

A. I think the parties involved and certainly, because I was not present when it may have occurred, but [328] on the basis of what I was told, I think that the parties involved were so told by our bargaining agent which is the AGC.

Q. Well, at the time, as I understand it, the AGC didn't enter into negotiations with these Unions until sometime after the 6th of January, did they?



(Testimony of Lee Knack.)

A. Well, as to the specific dates that the AGC inserted itself in there, I couldn't say sir, but I am quite certain by virtue of phone calls and so forth, that I received, that the AGC had been in the matter before the work stoppage had occurred and conferences and talk had occurred between them.

Q. That is right, but as of January 6th, and for sometime after that the AGC wasn't doing any bargaining for you on the Hanford project, were they?

A. Sir, by virtue of the contract that we were bound by, I was in no position, and the contract that we had with the AGC would not permit me to enter into any special agreements.

Q. Well now, Mr. Knack, didn't you sit in a couple of times as observers at meetings between these various Unions and the Hanford contractors negotiating committee after January the 6th?

A. No, sir; I did not.

Q. You did not? [329]

A. I did not, sir.

Q. I see. And you were at no meetings between the Hanford committee and the Unions?

A. The only time I sat in at a meeting as an observer was on January 5th, 1956.

Q. January 5, 1956?

A. Yes, sir.

Q. Alright now, at that time, or rather, you continued, as you have said, to pay the isolation pay and so forth. Now, when did the work stoppage occur?

A. I believe on March—the exact date I'm sorry I can't tell you.

Q. Do you recall whether or not on the day pre-



(Testimony of Lee Knack.)

ceding the work stoppage the Hanford committee had posted notices that they would no longer, their members would no longer pay isolation pay nor supply transportation?

A. That I wouldn't know, sir, because I was not on the site at that particular time. I have no knowledge of notices.

Q. Do you know whether or not after that notice was posted, whether Morrison-Knudsen continued one day or more to pay isolation pay and to provide bus transportation?

A. Well, sir, not having knowledge of the [330] notice I certainly couldn't tell you what would have occurred subsequent to the notice.

Q. I see. You don't know that?

A. No, sir, I don't.

Q. Have you had occasion to try to determine it?

A. Pardon me?

Q. Have you had any occasion to determine that before you came here today?

A. No, sir, I have not.

Q. I see. Do you know whether or not any representative of Morrison-Knudsen received a call from the Associated General Contractors or a representative of theirs after this work stoppage had occurred and after Morrison-Knudsen had continued to pay isolation pay and supply bus transportation, complaining about Morrison-Knudsen having anything to do with that in view of the other attitudes of the other contractors in withdrawing?

A. Well, sir, not having knowledge of the ques-



(Testimony of Lee Knack.)

tion that, a portion of the question, I certainly wouldn't have knowledge of the other portion of it either.

Q. I imagine you do.

A. I certainly don't know.

Q. You can say no if you wish or you can [331] say yes. Now, this agreement that I handed you here a moment ago, Exhibit 4, 1950 to 1955, refers to the work and territory affected. Do you notice that in Article I?

A. Yes.

Q. And the agreements that we have here, rather the agreements submitted by counsel, 2 and 3, also contain, do they not, the same clause in both of the Articles, territory and work covered? I am referring to 2 and 3.

A. There is some slight difference in the language.

Q. In the language, but I am talking about the territory described, the counties in Washington described. Will you tell me if those are the same in all three exhibits?

Mr. DeGarmo: I think the documents speak for themselves. It is just a waste of time to ask the witness to compare them.

A. They appear to.

Mr. Etter: Do you have an objection, counsel?

Mr. DeGarmo: Yes. I am objecting on the ground the documents speak for themselves, whether they are the same or not.

A. (Continuing): They appear to be the [332] same.



(Testimony of Lee Knack.)

Q. Benton County is in each one of them, isn't it?

A. Yes.

Q. And this agreement, of course, as you have indicated, was in force and effect and you became a party to it in 1955, from 1950 to 1955?

A. It was in force and effect and we became bound by it as of February, 1955.

Q. I see, and all of them say Benton County?

A. Yes, sir.

Q. And when you became a party to the AGC agreement in 1955, you knew, as you have stated—I don't know whether you have stated, but you knew there was a Hanford Agreement?

A. Yes, sir.

Mr. DeGarmo: I think that is established. I think he has answered that about four times.

Q. Now, after this work, you stated that, I think you said that you worked in accord with the AGC agreement I think your statement was, at all times after you became a member of AGC. Is that your testimony?

A. With the exception of the special project agreement that we had at Chief Joseph Dam, the powerhouse.

Q. Well, you didn't work in accord with the AGC agreement the first two or three months at Hanford, [333] did you?

A. Which two or three months do you mean, sir?

Q. Well, January, February, up until March when there was a work stoppage?

A. Well actually when we were working, started work then and began to hire people we were



(Testimony of Lee Knack.)

working under the Hanford Agreement by virtue of our contract.

Q. That is right, you weren't working then in accord with all of the terms of the AGC agreement, were you?

A. I don't think that—let's say this again, that we were working in conformance with Hanford Works Agreement under the provisions of our contract.

Q. Under the provisions of your contract with the Hanford——

A. With the Atomic Energy Commission.

Q. That is right, not under AGC? You can answer that yes or no, I think.

A. Well, in toto yes, we were not. However, by virtue of the way the negotiations were going on in part, the negotiations of the AGC were effective on the Hanford project, too.

Q. Oh, yes.

A. So there was an inter-relationship because the negotiations that were completed with the AGC wage [334] which also affected them, so I would have to say in answer to your question that we were working in accordance with both agreements because of their inter-relationship.

Q. Surely the AGC scale, the prevailing scale was the same on Hanford, wasn't it?

A. The AGC scales and the Hanford scales were those crafts the AGC negotiated with were the same.

Q. Yes, that is right, but in addition there was



(Testimony of Lee Knack.)

the traditional isolation pay and transportation, wasn't there, under the Hanford Agreement?

A. Yes, sir; yes, sir.

Q. And you paid that, did you not?

A. Yes, sir.

Q. And after the work stoppage the work was resumed after the hearings and one thing and another, isn't that correct?

A. Yes.

Q. Now, when you resumed work did you continue to work, did you continue to pay the isolation pay, did you continue to pay it, continue to provide transportation?

Mr. DeGarmo: Just a minute, if your Honor please, now we are getting into a field that I think we should have some cutoff on here. There was a [335] panel hearing on this thing to which we were not a party, but we are involved in it and the panel made a recommendation which was followed under protest and we say that we followed it because—and we have pleaded this in our pleadings—that we followed it because we were told if we didn't we were going to have a strike. In other words, they would not go back to work unless we followed the recommendations. We have sued in this action for all of the payments that we have made in accordance with that same panel recommendation and which we had to, we had shoved down our throat under the threat that if we didn't accept it the strike would continue to go on. Now——

Mr. Etter: Is it your statement to this Court



(Testimony of Lee Knack.)

that the panel told you there would be a strike continued if you didn't accept their recommendations?

Mr. DeGarmo: I am saying the Unions told us that your client and Mr. Carey's client told us unless we accepted that there would be a strike and we are going to be prepared to prove this in Court. We are going in it now why we paid it afterwards. Counsel knows why we paid it.

Mr. Etter: I didn't ask why, I asked him if he did pay it. You can explain why if you want to.

Mr. Carey: Mr. DeGarmo's statement now [336] answers his own objection. He says they are going into it, the very matter that Mr. Etter is inquiring about.

Mr. DeGarmo: I will withdraw the objection.

Mr. Carey: We don't agree it may be withdrawn.

Mr. DeGarmo: It goes to the question of liability, my objection is it goes to the question of the amount of damages not to the question of liability, and we are just getting into an issue that is going to lead us down a long trial here and get us no place.

The Court: Well, go ahead. The objection has been withdrawn I think.

Q. You finished the job by continuing the pay and providing the transportation as I understand it? A. Yes, sir.

Q. Is that correct? A. Yes, sir.

Q. Now, do you know, rather, as I understand



(Testimony of Lee Knack.)

it, the contract or the terms or conditions under which the Unions were working from January the 1st up until the time of the dispute, whatever it was, were combination of conditions, in other words, combination of provisions of the AGC contract with certain added benefits provided by the Hanford Agreement? [337]

A. Basically I think that is so.

Q. Basically that, isn't that correct?

A. Yes.

Q. Can you tell us what the Unions did at the time of this work stoppage that was a breach of any of the conditions of AGC that were being applied there or any of the conditions that the Hanford committee had extended in this letter which appears in the exhibit, in the pleadings, that I read to His Honor? Can you tell us anything the Unions did that violated any part of those combined agreements?

Mr. DeGarmo: I object to that upon the grounds that they have not shown that we are any party to the Hanford Agreement negotiating committee or to the commitments which were made, if you want to call them commitments, in the letter of December 29, 1955, which terminated the Hanford Works Agreement. He is assuming that we were a party to that, and I don't think there is any proof of that as yet.

Mr. Etter: I don't know. Mr. Knack's testimony has been that you proceeded to work and worked there for almost three months under combined AGC



(Testimony of Lee Knack.)

contract with the added benefits of the Hanford contract, and I merely asked him what condition of either of the contracts the Unions breached. What did they do. [338] You pray action here for a breach of contract. What did they do?

Mr. DeGarmo: That was no contract as far as the Hanford contractors negotiating committee and Morrison-Knudsen Co. is concerned. That is the basis of my objection. He assumes it was a contract. My objection is that he has not shown there was one. He is assuming that there was one.

The Court: I think that objection is well taken. He is asking though about what breach there was of the Associated General Contractors contract which certainly you are relying on.

Mr. DeGarmo: He can ask that.

Mr. Etter: He says there was no contract, your Honor. The very letter that McCaffery sent, we terminate but we are going to continue, he said, to work under this same contract until we negotiate a new one.

The Court: I don't think any contractual relationship has been shown between this plaintiff and the Unions under the so-called Hanford project. Where is there any evidence that they became signatory to any contract of that kind?

Mr. Etter: There is no evidence it became signatory to it. They just adopted it and used it [339] and the Union worked under it.

The Court: Because they continued to pay? Is it your contention because they continued to pay the



(Testimony of Lee Knack.)

isolation pay and certain transportation benefits that they thereby adopted——

Mr. Etter: Oh no, certainly not, but he has already testified that in 1955 when they went in there they were subject to the Hanford Works Agreement by virtue of this very contract that is here. He said, "We were subject to that." If they were subject to that and McCaffery didn't terminate it, aren't they bound to the extent that McCaffery's letter indicates?

The Court: Is it your position it wasn't terminated by the letter?

Mr. Etter: Absolutely it wasn't terminated.

The Court: You wish to amend your answer then to the interrogatories?

Mr. DeGarmo: I'd like to know that, too.

Mr. Etter: We admit, I think, that he sent a termination notice.

The Court: I thought you admitted they were terminated?

Mr. DeGarmo: They did admit there was no other agreement in effect. If they are going to come into court after those answers and try to make that [158] change——

Mr. Etter: I will state this: There was no other agreement.

Mr. DeGarmo: I——

Mr. Etter: Just a minute, Mr. DeGarmo, I don't think we need your comments. Yes, they terminated qualifiedly to this extent: They said, "We have terminated this agreement as of this date." But Mc-



(Testimony of Lee Knack.)

Caffery adds on in the next paragraph, "This doesn't mean that we are not going to continue to carry out the terms of this contract and negotiate a new one. We are going to be on the job and we want you people to come on the job and we will go along as we are until we negotiate a new one."

If he said that and the defendants here, the Unions, went along even though termination of that date, if the Unions went along on everything he proposed they go along on, and then McCaffery and his people did something to violate his commitment in the letter, how could we be guilty of breaching a contract? That is the point I am trying to get at here.

The Court: Well, you may proceed.

Mr. DeGarmo: My point is that as far as Mr. McCaffery is concerned, he had not one iota of [341] authority from Morrison-Knudsen Co. at anytime. You have never shown any.

The Court: Alright, go ahead. I will get the evidence first and then pass on the question that is presented.

Q. Well, you have answered this maybe ten times, but in view of your argument, were you not subjected to the provisions of the Hanford Agreement by virtue of this contract which is Exhibit 1?

The Court: That has been brought out. No question about that.

Q. (Continuing): Are you familiar with any other of the AGC contracts, Highway contracts with various companies and with the Unions further



(Testimony of Lee Knack.)

back than the agreement which is in evidence as I submitted there, for 1950 and 1955, Exhibit 4?

A. No, sir; I am not.

Q. Have you ever had a chance to examine any of them?

A. No, sir; I have had no reason to.

Q. And have had no reason to, and they are not in your files and you have not examined them?

A. They may be in my files, but I have had no reason to examine them.

Q. I see. [342]

Mr. Etter: Thank you, Mr. Knack. I think that is all.

Mr. Carey: I have some cross-examination I anticipate will take approximately half an hour.

The Court: We will quit then until tomorrow morning at ten o'clock.

Mr. Carey: Before your Honor leaves the Bench, I don't want to unduly press either the Court or counsel on those jurisdictional matters, but again I want to call your Honor's attention to the fact that I have one and possibly two witnesses here that I will have to hold if your Honor holds in the Joint Council, and also if we—when I say “we” I mean the Council and Western Conference—if we are going to be a party to this at the end, I have got to arrange for one and possibly two witnesses that have to come from Seattle. So if your Honor is not prepared to rule on that now——

The Court: Mr. DeGarmo, I understood, told me his associate was examining your authorities and he



will let me know in the morning whether or not he agrees. If not, I should hear your presentation of it at that time and make a decision.

Mr. Carey: Very well, thank you.

The Court: Before we proceed with any [343] more testimony.

(Whereupon, Court was recessed at four-twenty o'clock p.m.) [344]

Tuesday, June 11, 1957—10:00 o'Clock A.M.

(Whereupon, the trial in the instant cause was resumed pursuant to adjournment, all parties being present as before, and the following proceedings were had:) [346]

\* \* \*

Mr. Carey: Would it be of any assistance to the Court and counsel if I read the motion exactly as I made it?

The Court: Yes, all right.

Mr. Carey: I had this transcribed by the court reporter who was here yesterday:

“Joint Council 28, the Teamsters, and Western Council of Teamsters, each separately, move to dismiss the action as to it for the following jurisdictional reasons:

“(1) Plaintiff invokes the jurisdiction of this United States Court relying exclusively on Section 301 of the Labor Management Act of 1947, commonly known as the Taft-Hartley law. The action is one to recover damages for alleged breach of contract dated December 19, 1955, a copy of which



is attached to the plaintiff's amended complaint as Exhibit A. Neither Joint Council 28 nor the Western Conference is a party to that [349] contract. Therefore, neither is within the grants of jurisdiction defined in Section 301 of the Labor-Management Act of 1947.

“(2) If it be assumed that the plaintiff's amended complaint states any cause of action against either Joint Council 28 or the Western Conference, which is not conceded, nevertheless the cause of action so stated is not one for violation of breach of contract but rather is one for inducing a breach of contract by the Teamsters Local 839, which is an action for tort not within the jurisdiction conferred on the United States District Court by Section 301 of the Labor-Management Act of 1947.”

Mr. DeGarmo: As I understand it, then, that is the motion as to which the Court has requested that I direct my attention at this time?

The Court: Yes.

Mr. DeGarmo: It is my conception, if your Honor please, that the determination of whether that motion is good or whether it is bad must be determined by the pleadings, since it is made upon the pleadings and based upon the fact that we in our complaint have alleged that we have prosecuted this action and do [350] prosecute it under Section 301 of the Taft-Hartley Act.

I do not wish to concede the motion. As far as these defendants are concerned, I am frank to



state to your Honor, however, that I do not believe that under the allegations of the complaint we have alleged a specific contract with the Joint Council or with the Western Conference. We have only alleged as to those two defendants that they acted in concert with the Teamsters Local and, in effect, authorized, after requested to do so, and participated in the strike itself, and I conceive that that type of action is, as Mr. Carey pointed out, possibly one in tort and not in contract, as inducing a breach or participating in a breach of contract.

Therefore, without conceding the motion, I submit the matter to the Court under the Section 301. It is a new act, it is one that has not been too greatly construed by the courts, and I don't find any case in which this precise point—well, yes, there is one case in which this precise point was raised—and in that case the court held that, since there was no contractual relationship shown, the parent organization, so to speak, could not be held liable.

The Court: Well, as I told Mr. Carey, I have read the cases that he cited last night and it seems to [351] be the holding in those cases, and I am in accord with the holding, that the section of the Taft-Hartley Act which gives a right of action against unincorporated labor union associations—it is Section 185 (a), I believe, of Title 29, U.S.C.A., gives right of action for breach of contract with a labor contract and, of course, a federal district court is a court of limited jurisdiction, has no jurisdiction that isn't expressly conferred by the Congress, expressly or by clear implication, and it seems to me here that



I can't conceive of how a party could be sued or would be liable for breach of contract without being a party to the contract. There must be a contractual relationship before there can be a breach of that relationship or of the contract, and since these parties here in whose behalf this motion is made are not parties to any contract upon which the plaintiff relies, it seems to me that the contract action or action for breach of contract could not lie against them and it would have to be something in the nature, I presume, of a tort action for inducing another to commit a breach or at least a conspiracy to bring about breach of the contract.

There isn't any conspiracy alleged here and no tort liability alleged that would give this Court jurisdiction. There would have to be diversity of citizenship, [352] of course, if it didn't come within the provisions of the Taft-Hartley Act, so that I think the motions should be granted as to these two defendants, the Western Conference of Teamsters and Joint Council—let's see, is that right?

Mr. Carey: Joint Council No. 28.

The Court: No. 28, yes, I see. [353]

\* \* \*



## LEE KNACK

a witness called by the plaintiff, having previously been sworn, resumed the stand and testified further as follows:

Mr. Carey: Were you through, Mr. Etter?

Mr. Etter: Yes, sir.

## Cross-Examination

By Mr. Carey:

Q. Mr. Knack, you identified the original contract of November 25th, 1955, which has been in evidence as Plaintiff's Exhibit 1, that being the contract between your company, Morrison-Knudsen, and the Atomic Energy Commission. You recall that? A. Yes.

Q. Now, that is the actual date that the contract was executed?

A. That was the date that the contract was entered into.

Q. Yes. A. Yes. [354]

Q. That is another way of saying the same thing, I guess. How long prior to that date was it that Morrison-Knudsen bid on the work, if you know?

A. I couldn't give you the exact date, sir.

Q. Would it be some considerable length of time?

A. Well, any date, any time that I might give would be strictly an estimate of time.

Q. Well, give us your best estimate, realizing that it is an estimate only.

A. Well, usually the contracts are awarded somewhere approximately thirty days after bid. That can



(Testimony of Lee Knack.)

vary considerably, however, and I don't recall the circumstances surrounding this one.

Q. Well, you have three stages, do you not? They call for bids and you make your bid, then some time elapses and the bid is accepted from one or the other of the several bidders?

A. That's right.

Q. Yes. Then the bidder who is low bidder, if it is low bidder, or who is awarded the contract, he knows at once that he is to be the contractor?

A. Not necessarily, sir.

Q. Well, isn't that ordinarily true?

A. No, sir. In bidding government work, and there are various government agencies and it varies within [355] government agencies——

Q. Yes.

A. ——so that quite frequently it is conceivable that you may have a bid in which you may be low bidder, but you may be so far out of the realm of the estimate, government estimate, that you may not be awarded the contract.

Q. Oh, I realize that, but that wasn't the point of my question. Whether you are low or not, you won't get it unless you are a qualified bidder; that is certain, isn't it?

A. I would say that was fairly true, yes.

Q. But after you have actually been awarded the contract, you soon learn that you are the preferred builder on that particular job?

A. Customarily, you receive a formal notice to proceed, yes.



(Testimony of Lee Knack.)

Q. Yes. Then the execution of the contract follows sometime later?

A. Well, that not being in my particular province within the company's operations, sir, I can't tell you just exactly the order of procedure there.

Q. So in this particular instance, you wouldn't be able to state what length of time elapsed from the time Morrison-Knudsen learned that it was accepted as the contractor up to the date of the execution of a formal contract? [356]

A. No, sir, I couldn't.

Q. Could you make any estimate at all?

A. Again, I could only make an assumptive estimate on the basis they would be somewhere within a thirty day period.

Q. I guess the best answer is, then, you don't know, is that it?

A. I would say that, yes, sir.

Q. However that may be, the formal contract was executed on this date of November 25th, 1955?

A. Yes, sir, it was so dated.

Q. You know that?           A. Yes, sir.

Q. How soon after the execution of the contract on that date did you start to perform work?

A. That again, sir, is something that I wouldn't have explicit knowledge of, of the actual date that we began to perform work. There is a matter as to what is the conception of "work," because initially you begin to open an office, you might employ certain office personnel before you employ mechanics and laborers under the contract, and because I do



(Testimony of Lee Knack.)

not get into the picture insofar as the start of the jobs are concerned or when the personnel are employed. I cannot answer the question for you. [357]

Q. Well, you do know this, do you not, as one of the force of Morrison-Knudsen, that the first essential to performing a contract such as this was is to get the men to do the work, isn't it?

A. Yes, sir.

Q. Yes. That is the first thing you start out with is to recruit a crew? A. Yes, sir.

Q. The original complaint in this case and the amended complaint both state that the work under the contract dated November 25th, 1955, was started along about November 28th, 1955. You wouldn't be in a position to dispute the accuracy of that statement, would you?

A. I would neither be in a position to dispute it or to verify it.

Q. Assuming now that that estimate is correct, that was some 35 days prior to the effective date of the contracts upon which this suit is being brought, wasn't it?

A. Assuming that to be so, that would be the time element, would be correct.

Q. Yes. Some work was being done of some kind or character between, say, November 28th and January 1st, 1956?

A. I think that would be somewhat true, yes, within limitations of beyond my knowledge. [358]

Q. Can you tell us where you were during that period?



(Testimony of Lee Knack.)

A. In that period, I can to some degree. Let's see, in the period from December, approximately, 16th through to perhaps the 23rd or 24th of December, I was in Boise, Idaho, because that is the time of our board meetings and I am there at that time.

Q. Well, you were back and forth, weren't you, to Pasco during that period? A. No, sir.

Q. Who, on behalf of Morrison-Knudsen, took the initiative in recruiting the work crews for this job?

A. That would be the administrative force on the job itself, sir.

Q. Well, what individual, if you know?

A. The project manager was Ray Reed.

Q. Is he here? A. Yes, sir, he is.

Q. So he ought to be able to tell us something about that? A. Yes, sir, I would think so.

Q. Now, in answering some questions of Mr. DeGarmo and again with Mr. Etter yesterday, you made some reference to some meeting which, as I understood, was at Pasco on January 5th, 1956?

A. That is correct.

Q. You mentioned as being present at that meeting Mr. [359] Rossman?

A. I spoke of two meetings, sir. I spoke of a morning meeting and an afternoon meeting.

Q. Yes, you are correct about that.

A. And insofar as Mr. Rossman's presence is concerned, I know for certain that he was at the



(Testimony of Lee Knack.)

morning meeting, and that was the reference that I had as to Mr. Rossman's attendance.

Q. Then you had intended when you made that answer to have it relate to the morning meeting rather than the afternnon meeting?

A. That is the certainty point——

Q. Yes. A. ——of my answer, yes.

Q. Anyway, Mr. Rossman was there?

A. At the morning meeting.

Q. At the morning meeting? A. Yes, sir.

Q. You also mentioned Mr. Hollingsworth?

A. I mentioned Mr. Hollingsworth, sir, as being present at a meeting that was held here in Spokane. I did not make reference to Mr. Hollingsworth being present at meetings either at the A.E.C. on January 5th or at the Pasco meeting of January 5th.

Q. Well, that is what I wanted to get clear. Let's confine [360] ourselves for the time being to the morning meeting at Pasco on January 5th, 1956.

A. Yes, sir.

Q. Now, according to your best recollection, who were there?

Mr. DeGarmo: Pardon me, Mr. Carey, you mentioned a morning meeting at Pasco. I don't recall that there was a morning meeting.

Q. (By Mr. Carey): Wasn't this meeting at Pasco?

A. This was at the A.E.C. offices in Richland.

Q. Oh, in Richland? A. Yes, sir.

Q. I am not very familiar with that geography



(Testimony of Lee Knack.)

over there. So that was at Richland, all right. Now, at that meeting, you were there?

A. Yes, sir, I was.

Q. You know that? A. I certainly was.

Q. Who else was there?

A. Well, that meeting, sir, was a meeting apparently of the Hanford Negotiating Committee and various representatives of various labor unions, and I can recollect some of the people that were there but not all of them.

Q. I can understand how that would be. Tell us, though, who were there that you remember. [361]

A. There was Mr. Reed and myself, Mr. Henry Thurston of the A.E.C. was present at that meeting. I am not certain whether Mr. Frank Bacon was or not. It seems to me that he was.

Q. Who is Mr. Bacon?

A. He is also of the A.E.C. Mr. McCaffree, Ken McCaffree was there.

Q. Now, he was, I think Executive Secretary of the Hanford Negotiating Committee?

A. I believe that was his title, yes. There were some contractor representatives there of Hanford Works operations; there was a gentleman there from the J. A. Jones Company whose name I do not remember; Mr. Rossman was present there, and there were other people present, sir, that I would be uncertain in my mind as to who they were, I mean to definitely recollect.

Q. Aside from Mr. Rossman, do you recall if



(Testimony of Lee Knack.)

there was any representative of the Engineers Local there?

A. Other than Mr. Rossman, I don't recall, sir.

Q. Are you able to recall whether or not any representative of the Teamsters Local 839 was there?

A. Specifically, sir, I don't recall, I mean who it may have been, but I do recall that there was Teamster representation in the room, but who it was I don't recall.

Q. Now, without going into too much detail, what was the [362] subject matter of the discussion there at that morning meeting?

A. Well, sir, I had been informed that a meeting was to be held between various craft representatives, union representatives, and the Hanford Negotiating Committee, and I had learned of that through Mr. Thurston of the Atomic Energy Commission the day previous at my arrival at Richland and we had been asked if we would sit in on the meeting and merely listen and observe as to what was transpiring currently between the Hanford Negotiating Committee and the unions or some of the unions with whom they dealt or had been dealing, I should say.

Q. You didn't refuse, of course?

A. No, I didn't refuse.

Q. As a matter of fact, you were vitally interested because just thirty days or so before, forty days, you had entered in this contract for the performance of some work in the Hanford area?



(Testimony of Lee Knack.)

A. That is correct.

Q. And that is why you were interested?

A. Well, certainly I was interested, sir, from the standpoint that any time we have work to perform within a given area, the economic factors and circumstances in that area are of vital interest to us in the performance of that work. [363]

Q. Yes. Before you started to work on this contract of November 25th, 1955, were you already doing some work in the Hanford Area?

A. Prior to?

Q. Yes.

A. We had done work, as I understand it, prior to my time with the company, but in between the time that I had started with the company and to that date, we had not done work specifically in the Hanford Area.

Q. Then at the time you started to work on this contract when I say this contract, I mean the contract of November 25th, 1955——

A. Uh-huh.

Q. ——you were not at that time doing any work, any other work, in the Hanford Area?

A. That is correct.

Q. That is what I wanted to bring out.

A. That is correct.

Q. Now, I suppose that this meeting was carried on in an orderly way, wasn't it?

A. Yes, sir.

Q. These meetings usually are, aren't they?

A. Invariably, sir.



(Testimony of Lee Knack.)

Q. All the representatives on both sides, or three sides, really a three-cornered affair, isn't it—the Atomic [364] Energy people, the contractors, and the labor unions?

A. It is your terminology, sir.

Q. All right. If you can invent any better, I would be glad to have the suggestion.

A. I couldn't invent any better.

Q. Okay. Now, wasn't the matter of major discussion there this question of isolation pay and bus transportation?

A. Well, I think, sir, that actually as an observer, I think it should be made clear that when I attended the meeting and as the meeting opened it was emphasized by both Mr. McCaffree and by myself that our presence in that meeting was one of observing, that we were not being represented by the Hanford Negotiating Committee, and the discussions which took place between the Hanford Negotiating Committee and the members of the unions that had been dealing with the Hanford Negotiating Committee. Now, that there was discussion concerning the bus transportation and the isolation pay, I can testify that there was, but that that was the predominant discussion, I cannot so testify.

Q. Anyway, as an observer, you were not only looking but you were also listening, weren't you?

A. Yes, sir.

Q. And you did hear this discussion about isolation pay and bus transportation? [365]



(Testimony of Lee Knack.)

A. I heard that as among some of the points that were discussed that morning, yes, sir.

Q. Yes. Well, we are only trying a lawsuit about that so we will try to confine ourselves to that subject.

Is that all you remember now about the morning meeting on the 5th?

A. No, sir, it is not all that I remember about it.

Q. Well, what else do you remember?

A. Well, I recall in relation to my presence there, and specifically the reason why I recollect Mr. Rossman's presence there, the question came up concerning the Morrison-Knudsen Company's status contract-wise on the job—when I say contract-wise, I mean in relation to the union associations by our agreements—and I remember specifically mentioning, directing the observation to Mr. Rossman, in that meeting that we, as Morrison-Knudsen Company, being a part of the AGC Heavy and Highway Agreement, that we considered that that agreement was applicable to that area because the area was so specified in the agreement, and directing it to Mr. Rossman.

Mr. Rossman said that that was a possibility that that was so, but rather than to make a commitment, he thought he'd better refer that particular problem to legal counsel. [366]

The Court: Pardon me, who is Mr. Rossman?

Mr. Carey: Mr. Art Rossman, this good looking gentleman behind Mr. Etter, representing the Engineers.



(Testimony of Lee Knack.)

The Court: He represents the Engineers? I just wanted to be sure about that.

Q. (By Mr. Carey): Did any conversation occur between you and Mr. Rossman at that meeting that you recall?

A. The conversation that I just recited, sir.

Q. You did have a conversation with Mr. Rossman?

A. Yes, sir.

Q. Do you recall whether or not at that meeting, and I am referring to the morning meeting on the 5th of January, Mr. Charlie Knapp was there?

A. Yes, I believe Mr. Knapp was there.

Q. So we can add his name to the roster?

A. As I say, I believe he was there, yes.

Q. Did you have any conversation with Mr. Knapp in connection with that morning meeting?

A. That morning meeting, no specific conversations with Mr. Knapp relating to the subject at all.

Q. Now, do you mean that you are positive that you did not have or merely that you don't remember of having any?

A. As any direct conversation with Mr. Knapp on the problem, as such, I don't recall having any at all as a direct conversation with Mr. Knapp. [367]

Q. You have known Mr. Rossman and Mr. Knapp for quite a number of years, haven't you?

A. I have been acquainted with Mr. Rossman since about 1952; I have been acquainted with Mr. Knapp approximately the same period of time. However, my contacts with Mr. Rossman have been very much more frequent than they have been with



(Testimony of Lee Knack.)

Mr. Knapp. In other words, I think I have seen Mr. Knapp ever since 1952 perhaps a half a dozen times, where I have seen Mr. Rossman with great frequency in that period of time.

Q. Well, whatever contacts you have had with Mr. Rossman and Mr. Knapp, I assume, have been for business reasons, haven't they?

A. Yes, sir.

Q. And you have found them honorable gentlemen?

A. Yes, sir.

Q. They wouldn't lie about you?

Mr. DeGarmo: Just a minute, if your Honor please. I object to that.

The Court: Yes, I think that is for the Court to determine, the credibility of the witnesses.

Mr. Carey: Very well.

Q. (By Mr. Carey): Well, now, that is all you remember about the morning meeting of January 5th at Richland? [368]

A. Again, you say "all," sir. You can remember snatches of things, of course. I do recollect that one part of the discussion, would seem to be a rather predominant part of the discussion, in that morning meeting occurred between the Hanford Negotiating Committee and some of the representatives in the room and I think it was in reference to the Pasco-Kennewick Building Trades Council representation in the meeting, as to which group did the Pasco-Kennewick Building Trades Council represent craft-wise of the various crafts in relation to the Hanford



(Testimony of Lee Knack.)

Negotiating Committee. I mean that seemed to have been an issue that, frankly, I am unable to give too many details on it simply because it seemed to have many past factors and associations back that were out of my scope of knowledge.

Q. Well, I guess we have about exhausted the morning meeting, let's come to the afternoon meeting. When was that held and where?

A. That was held in the Labor Temple in Pasco, I would say somewhere around 2 or 2:30 in the afternoon that the meeting commenced.

Q. Now, you were there at that meeting?

A. I was, sir.

Q. Again as an observer?

A. No, sir. [369]

Q. In what capacity were you there then?

A. That meeting, sir, had been requested of us and I received the notice of the request through our project manager, Mr. Ray Reed, sometime in the middle of December. He called me in Boise, Idaho, at my office, and informed me that the Pasco-Kennewick Building Trades representative, I believe a Mr. Bud Shure, had called him and asked if we would have what is known in the construction industry as a pre-job conference.

Q. Yes.

A. And it was that pre-job conference meeting that was being held in the afternoon.

Q. Now—— A. So——

Q. Pardon me. Now, this Pasco-Kennewick Building Trades Council—is that what you called it?



(Testimony of Lee Knack.)

A. I think that is the title of it, yes.

Q. That would include both the Engineers and the Teamsters?

A. I would be unable to say whether or not those organizations were affiliated with the Building Trades Council.

Q. Well, anyway, that specifically was a meeting that had been arranged for long prior to the morning meeting? A. Yes.

Q. The morning meeting developed rather spontaneously, [370] apparently?

A. Sir, let me say this, that the afternoon meeting, insofar as my participation in it was concerned, was one that had been arranged for sometime in mid-December. The events of the morning meeting and its arrangement, I would not know how long that had been arranged for, because it was merely because of my being present there for the afternoon meeting, and I had arrived the day before in Richland, let's say that my attendance in the morning meeting was one of happenstance——

Q. Yes. A. ——more than direction.

Q. But this afternoon meeting, which you call a pre-job conference, was a formal meeting arranged for after you knew you were going to do this work under this contract of November 25, 1955?

A. That is correct, yes.

The Court: Is that the meeting in Pasco on the afternoon of the 6th?

A. On the afternoon of the 5th, I believe, sir.

The Court: On the afternoon of the 5th?



(Testimony of Lee Knack.)

A. Yes, sir.

The Court: Oh, yes.

Q. (By Mr. Carey): Well, at that meeting, you were there, Mr. Reed was there—— [371]

A. Mr. Reed was there.

Q. ——and who else?

A. Mr. Bill Dunn was there of the Operating Engineers.

Q. Mr. Dunn? A. Yes, sir.

Q. Now, the Operating Engineers, I presume you mean the Local? A. Yes.

Q. Yes.

A. There was—I can recall there was a representative of the Sheet Metal Workers—I don't recall his name—there was a representative of the Asbestos Workers, there was a representative of the Electrical Workers, there was a representative of the Pipe Fitters, there was a representative of the Cement Finishers, and there were others in that particular meeting, sir. When we called the meeting together, as I recollect, there were some union representatives who were not in the meeting when it proceeded. There were some who came during the meeting while it was in progress, and there were some that left while it was in progress, who were there at the onset, so it is rather confusing to recall and recollect everyone who was there.

Q. I appreciate that. But isn't this statement generally true, that at that prearranged pre-job meeting at some [372] time or other during the course of the deliberations, there were representa-



(Testimony of Lee Knack.)

tives there of all the Locals that you anticipated you would be calling on to supply workmen?

A. As best as the circumstances to our knowledge at the time, yes, I think that is so, and I think there were also representatives of other Locals whose services we would not be requiring who were present.

Q. Well, was Mr. Rossman present at that meeting?

A. To the best of my knowledge, I cannot recollect whether Mr. Rossman was present at the meeting or not, sir.

Q. But if Mr. Rossman says he was, you wouldn't deny it, would you?

A. I certainly would have no reason to.

Q. Do you recall whether Mr. Knapp was present at that meeting?

A. I recall that Mr. Knapp was in the meeting. As to the length of time of his presence in the meeting, I am unable to say whether he was there for the full time or not.

Q. But you do recall definitely that he was there?      A. Yes.

Q. At some time or other?      A. Yes.

Q. But how long he remained—— [373]

A. I don't recall.

Q. You don't know whether he came in early or left early, you wouldn't undertake to say that?

A. There were other circumstances which lead to my confusion, because other representatives stopped and talked to me about other situations



(Testimony of Lee Knack.)

before we left the building in relation to other work that Morrison-Knudsen Company had in other areas in which they were affected, and there was much more discussion there that day other than related subjects.

Q. By the way, about how long did this meeting last?

A. Well, the meeting itself, as I recall, I was at the building itself somewhere, as I say, around from 2 to 2:30 until possibly after 5. How long after 5 I don't recall, because I knew that I had a scheduled plane out and I did stay long enough that I just had time to return to Richland to pick up my bag and get to the airport.

Q. Now, do you recall, Mr. Knack, that any representatives of Local Teamsters 839 were there?

A. Specifically, sir, I cannot say that there were representatives of Teamsters Local 839 present.

Q. I have been told there were quite a number there. Would you undertake to say that was not true?

A. I couldn't say that it was untrue or—— [374]

The Court: I think the Court should make a few remarks here in the interest of perhaps expediting this trial.

Of course, I will be obliged to take as much time as is necessary to try it, but the way it is starting out here, well into the second day without finishing one witness, it is beginning to become apparent that it is going to knock off a lot of other cases from the



(Testimony of Lee Knack.)

calendar that have been set for trial here in Spokane and that the counsel are ready to try.

Now, I can't tell, of course, from this protracted cross-examination what you are driving at, but it looks to me as if you are going right ahead without missing a beat and laying the foundation for proof in support of the affirmative defense which the Court has stricken from your pleadings. It looks to me as though the only purpose of this would be to show that the parties didn't actually intend that this contract negotiated through the Association here in Spokane, Associated General Contractors, should apply to this job.

At any rate, I think the Court is entitled to know just what you are pointing at here. I think I have a right to know what your contention is now. In view of the state of the pleadings, counsel is entitled to know. [375]

Mr. Carey: Yes; that's right.

The Court: Do you claim that the plaintiff was operating with these unions down there on this job on an oral contract that was negotiated at these meetings, or operating without any contract or under the Area contract?

Mr. Carey: This particular part of my examination is directed to the very matter that Mr. Etter called——

The Court: I wasn't too clear on what Mr. Etter was driving at either.

Mr. Carey: Maybe if you would get clear with Mr. Etter, you would understand me.



(Testimony of Lee Knack.)

The Court: Well, I just would like to know because I think I am entitled to know and counsel is entitled to know.

Mr. Carey: Well, Mr. Etter pointed out yesterday—well, let me start over again.

We put in the record these four sets of demands and answers, and by the agreement of everybody they stand the same as pleadings. Among other things in there is this letter from Mr. McCaffree dated——

The Court: Well, I don't care what you have got in your requests and your answers, that isn't binding on the Court if they are off the track and not [376] material here to any issue in the case, and I can disregard them and I am not obliged to sit here and listen to testimony day after day regarding something that isn't material.

Now, you must have a defense. What is your defense? Since I have stricken your attempt to vary the terms of the written contract by oral testimony, what is your defense that all this is based on? Can't you tell me in plain English?

Mr. Carey: It is just what Mr. Etter undertook to present yesterday.

The Court: Well, perhaps Mr. Etter can tell me, somebody tell me. What is all this directed to, day after day?

Mr. Etter: I say the contract that they are suing on was not in effect and they were not acting under it, and, as a matter of fact, although they were signatories to what you call the A.G.C. contract,



(Testimony of Lee Knack.)

there wasn't anybody acting in accord with it, as a matter of fact, and whether or not they could enforce a right is something I don't know, but the question that I am concerned with, first, is whether or not if people voluntarily say, "We are going to work under this particular agreement," whether they can then claim breach of another [377] agreement.

Now, that isn't varying the terms of it.

The Court: Is it your contention, then, that they were acting or operating under the Area contract?

Mr. Etter: Absolutely. As a matter of fact, one of these admissions, this one statement of McCaffree's, the letter terminated, the answer to that admitted, subject to the qualification, that between December 31, 1955, and the date of the work stoppage referred to in the plaintiff's complaint and amended complaint, negotiations were carried on and were being carried on between the committee representing the contractors for new contracts covering construction work to be performed exclusively in the Area.

Mr. DeGarmo: I point out that this is their answer, that is not our answer.

Mr. Etter: That is very true, that may not be his answer, but his Honor is asking me on what theory we have got to argue with you whether or not we have breached a contract.

Now, if you people are parties to an agreement where you are waiving the enforcement of your agreement, even though you say it covers Benton



(Testimony of Lee Knack.)

County, if you are waiving the enforcement of it, I can't see why we haven't a right to show that, if we are led into this situation over there because they all agree on extending it and [378] they all agree that the Contract is effective, and then come back and say we have breached some other contract, even admitting that we signed it.

The Court: Well, my point is at this stage of the trial, if you are shifting your position and relying upon waiver of the contract which was negotiated up here in Spokane, the Associated General Contractors, or you are relying on something in the nature of estoppel, that you were misled to your detriment by the conduct of these people, then Mr. DeGarmo is entitled to know it, I should think, because it isn't in the pleadings.

Mr. DeGarmo: That's right.

The Court: It isn't set out in any issue that I can see here.

Mr. DeGarmo: That's right, and I object to it.

Mr. Etter: Well, your Honor——

The Court: Of course, I want to try the lawsuit on the evidence.

Mr. Etter: Facts.

The Court: As long as it is within the proper channels, and not to the pleadings, but I think that we ought to have a definite understanding of where we are going here at this stage of the game.

Mr. Etter: Well, your Honor, let me make this statement: Your Honor refers to estoppel and [379] these different things. If that is what the doctrine



(Testimony of Lee Knack.)

is that permits this showing, that is fine and dandy, but I am frank to confess I don't know for this reason, that you asked the other day about mutual mistake.

Now, our position was in the beginning that there couldn't have been any mutual mistake. When people were doing something and they both understood exactly what they were doing, I can't see where we can claim mutual mistake. I can't say at the time that we carried on these negotiations at Hanford and carried them on with A.G.C., that there was fraud in A.G.C.'s minds or fraud in our minds or fraud in Morrison-Knudsen's, so we can't say at that time because nobody certainly thought there was any fraud. Now I can come in, I suppose, and charge that they have committed a fraud by bringing this action, but that is not part of this action, so I can't truthfully say mutual mistake, I can't truthfully say fraud.

We can show this course of conduct that shows, as a matter of fact, that we didn't breach that contract. We can show what happened down there. Now, if that constitutes estoppel, all right, and that certainly is a plea of ours, and if it constitutes any of these other defenses, but I say we are in a peculiar position, your Honor, as a result of a situation down there not of [380] our choosing that started back in 1946 and of these negotiating committees and of contracts that have been written precisely like this one is, has been sued upon, that haven't been effectively interposed down there.



(Testimony of Lee Knack.)

As an example to show the position that we are in here, I tried a contract the other day, your Honor, which is the agreement of the Associated General Contractors with every one of the unions, including the two defendants, extending from 1950 to 1955, for five years, in which in that contract it refers descriptively to the very same thing that your Honor said barred us from this testimony. It says Benton County, Benton County, Benton County, and yet, so your Honor will understand my position, there is a contract which has been in force on the Hanford Project which refers to the precise specifications that they have in their contract; in other words, refers to the exact thing in their contract about the Hanford agreement in which it refers to this exhibit of the territory covered and which they set out this area, including that portion of Benton County.

Now, that is the position that we are in. Here is a contract that covers that small portion of Benton County that is involved in this lawsuit that has been in force and effect for five years and [381] continued each year for every contractor that ever does any work down there.

Mr. DeGarmo: Is that contract in evidence?

Mr. Etter: No; it is not, but I am trying to explain what the position is. The Court can disregard what I have to say if he wishes, but, nevertheless, I am saying we are placed in this position where we have one contract here and another contract, and your Honor has ruled on the basis of the words,



(Testimony of Lee Knack.)

"Benton County," that nobody could be mistaken about Benton County, and yet the 1950-1955 contract of the A.G.C. says Benton County just the same, and neither Mr. Guess nor anybody will ever claim they had any contract or jurisdiction that covered this county, on a contract that has been in existence for five years in the same language prior to the time they executed this one.

That is the purpose of trying to show that there was never a breach of this contract.

Mr. Carey: I notice, your Honor, that that half hour's cross-examination of mine has already extended to a full hour.

The Court: Well, we used to say in the Army that is S.O.P., standard operating procedure. I am not surprised at that.

Mr. Carey: Yes. [382]

The Court: Mr. DeGarmo.

Mr. DeGarmo: I think, if your Honor pleases——

Mr. Carey: Just a moment, Mr. DeGarmo. My memory may be at fault in this, sometimes is, but as I recall, Mr. DeGarmo on his direct examination inquired of the witness on the stand about these very meetings on January 5th.

Mr. DeGarmo: No, no; you are wrong, Mr. Carey. I never mentioned a meeting on January 5th. That was brought out on cross-examination.

Mr. Carey: Well, I say——

The Court: All right.

Mr. Carey: Anyway, I infer that your Honor——

The Court: Well, if you have in mind proving



(Testimony of Lee Knack.)

that the plaintiff didn't operate under this contract on which they rely, why, of course, if you can show that or if you can bring out in any way that you didn't breach the contract, that is a matter of general denial.

Mr. Carey: I think I understand.

The Court: But the Court still adheres to its ruling that this contract is not ambiguous and that it may not be varied by parol evidence.

Mr. Carey: Well, I can bring it to a conclusion.

The Court: It is time for recess now. Court will recess for ten minutes. [383]

(Short recess.)

The Court: All right, proceed.

Mr. Carey: Your Honor, I want to ask another question or two and then I will make an offer of proof.

The Court: Yes; all right.

Q. (By Mr. Carey): Mr. Knack, you recall that the Teamsters' contract now in suit, Exhibit 2, was executed December 19, 1955, effective January 1st, 1956?

A. That's right.

Q. Now, before the effective date of that contract with the Teamsters, this Morrison-Knudsen work was already in progress?

A. Yes; that is correct.

Q. Starting, according to the complaint, about November 28th and continuing up until December 31st?

A. Yes.

Q. That is about 30 days it was in operation?



(Testimony of Lee Knack.)

A. As to what degree of operation, sir, I am unable to say.

Q. Some operation?                   A. Yes.

Q. What contract were you operating under during that 30 days?

A. Well, we were operating, sir, in that period under the provisions of our contract with the A.E.C. which [384] specified under what conditions we were to work under.

Mr. Carey: I now offer to prove, your Honor, by Mr. Knack, the witness on the stand, that this meeting which we have called the afternoon meeting, at which he was present, Mr. Reed, representing Morrison-Knudsen, was present, Mr. Rossman, Mr. Knapp, and a number of other persons representing different locals, Mr. Knapp asked Mr. Knack, the witness on the stand, the direct question concerning what the policy of Morrison-Knudsen was with respect to paying isolation pay and furnishing transportation during the continuance of the job then in progress; that Mr. Knack said, in substance, that they had bid the job upon the assumption that isolation pay and bus transportation would be furnished and that it was their intention to continue operation under that understanding of the Hanford contract.

The Court: It is rather unusual, in my experience at any rate, to——

Mr. Carey: Pardon?

The Court: I say, it is rather unusual, in my experience, for counsel to make an offer of proof



(Testimony of Lee Knack.)

of what a witness on cross-examination will testify. I don't know if Mr. DeGarmo is willing to concede that he will so testify. [385]

Mr. DeGarmo: I certainly am not.

The Court: Otherwise, I think you'd better continue with the examination of the witness, because if you make the offer of proof and he isn't going to testify to that, this is just cross-examination, this isn't your case yet.

Mr. Carey: I understand.

The Court: You see? So I think you'd better proceed with the cross-examination, if that is what you want to ask him.

Mr. Carey: Well, the reason I made the offer of proof, was your Honor already indicated you didn't care to have the cross-examination proceed along that line any further.

The Court: No; I didn't intend to so indicate. I wanted to find out what it was leading to and what it pertained to, I wanted to know what your defense was, and if you are trying to develop here that the company didn't operate under this contract at all in the work in the Hanford Area and that you didn't breach it, why, anything that is material to those issues, you can proceed.

Mr. Carey: Well, that is what we want to bring out.

The Court: All right, go ahead. Mr. [386] DeGarmo?

Mr. DeGarmo: I don't wish to take issue with the Court's statement, since I don't regard it as



(Testimony of Lee Knack.)

an official ruling. I don't want the record to lose sight of my objection, that any attempt on the part of these defendants to show reliance upon an oral contract or upon a waiver, both of which must be pleaded, they are affirmative defenses and they have not so pleaded them, and, therefore, any attempt to offer such evidence, I wish my objection to show.

The Court: Well, yes, the record may show your continuing objection, Mr. DeGarmo. All right, go ahead.

Q. (By Mr. Carey): I will ask you the direct question, then, Mr. Knack, if at the meeting we have last been discussing, the afternoon meeting on the 5th, if it is not a fact that Mr. Charlie Knapp asked you the direct question about what Morrison-Knudsen proposed to do in carrying on this work and whether or not you would continue to pay isolation pay, furnishing bus transportation, and you assured him that that is what would be done?

Mr. DeGarmo: Just a moment, Mr. Knack.

In order again to be triply sure, I wish my objection to show to that specific question, the objection I just stated, upon the grounds it is an attempt by these defendants to show an oral contract. [387]

The Court: Very well.

Mr. DeGarmo: Which has not been pleaded.

The Court: The objection is overruled.

Q. (By Mr. Carey): Will you answer the question, please?

A. Well, the question has many facets to it—



(Testimony of Lee Knack.)

Q. Pardon?

A. The question has many facets to it, sir, and in order to answer the question properly, the question was put to me whether it was Mr. Knapp or not. I don't recall, but the question was put to me as to what our position was in relation to the payment of isolation pay and the continuing transportation as the matter stood at that moment. In other words, there was no question asked of me as to how we were going to operate through to the completion of our work on that project, and because of my contact with the morning session as an observer, in which it was indicative of the fact that these people who had been negotiating previously and were still discussing matters between themselves, that they were endeavoring to arrive at some sort of a solution to their problems, and that on that basis, that we of the Morrison-Knudsen Company were not going to be the people who were going to discontinue that practice; in view of the fact that other contractors there were continuing the practice, were still paying [388] the pay, that it was unrealistic to believe that we could do so and employ people under those competitive conditions.

Q. You did, then, have a conversation with Mr. Knapp on that occasion concerning the subject matter of my question?

The Court: He says he doesn't recall whether it was Mr. Knapp.

Mr. Carey: Pardon?

The Court: He said he doesn't recall whether



(Testimony of Lee Knack.)

it was Mr. Knapp or not; he had a conversation with someone there.

A. It was a conversation, to the best of my recollection, which occurred as part of the meeting.

Q. (By Mr. Carey): Yes. It could have been Mr. Knapp? A. It could have been, yes.

Q. It could have been Mr. Rossman?

A. I don't recall Mr. Rossman at all making any conversation of that light in the afternoon meeting.

Q. Would you be able to state, Mr. Knack, how many Teamsters were actually employed on this job at the time and immediately before the time the strike started on March 22nd?

A. No, sir; I would not be able to state.

Q. And would you know whether many or [389] few?

A. I wouldn't have any idea as to the number, sir.

The Court: I'm sorry, I didn't get that last question and answer. What did you ask him, Mr. Carey?

Mr. Carey: I asked him if he had any idea how many Teamsters were employed, whether many or few, and he said he didn't know.

The Court: Thanks. Prior to January 1st, you mean?

Mr. Carey: No.

Mr. DeGarmo: Prior to the strike.

The Court: Prior to the strike.

Mr. Carey: Prior to the beginning of the strike on March 22nd. The strike started on March 22nd.



(Testimony of Lee Knack.)

The Court: The one thing that occurs to me, while I think of it here, Mr. Knack—I don't know whether you can answer my question or not—but you have testified here, as I understand it, that at least there was some activity, some beginning of the performance of this contract that you had, construction contract with the Atomic Energy Commission, about the latter part of November, the 28th of November, or something like that——

A. Yes, sir.

The Court: ——and your contract that you had negotiated here through the Associated [390] General Contractors didn't become effective until the 1st of January, 1956, is that right?

A. The current agreement, that is correct.

The Court: Yes, that is the agreement in suit here. Could you tell me how many members of these defendant unions that Morrison-Knudsen employed before the 1st of January, 1956?

A. On the Hanford Project?

The Court: On this particular job.

A. I'm sorry, sir, I couldn't, no, sir.

Q. (By Mr. Carey): One more very short subject and I will be through. Are you familiar with a letter dated April 27, 1956, written by your attorneys, Allen, DeGarmo and Leedy, and signed by Mr. DeGarmo, addressed to the International Brotherhood of Chauffeurs, Warehousemen, and Helpers, Labor Temple, Pasco, and International Union of Operating Engineers, Local 370, 325 South



(Testimony of Lee Knack.)

Brown Street, Spokane 4, Washington, concerning this controversy?

A. I couldn't say as to any familiarity with that particular letter, sir, unless I were to see it.

Q. I will show you a copy of it attached to the original complaint.

A. Yes; I am familiar with the letter.

Q. How long have you been familiar with it? [391]

A. I would say at the approximate time that it was sent out.

Q. Were you consulted about the writing of it?

A. Yes.

Q. The strike had been in progress then from March 22nd to the date of the letter, or substantially 35 days? March 22nd to April 25th, approximately 30 days?

A. Could be.

Q. Yes. Isn't it a fact that as of the date of that letter was the first time that you ever notified any of these unions that you claimed that the two contracts in suit now applied to the Hanford Works?

A. No.

Q. When did you notify them formerly, prior to April 27th?

A. There were contacts and conversations and meetings, which I did not attend, which were under the auspices of our bargaining agent in which our bargaining representative, the Associated General Contractors, were engaged, and as to the dates and the times of those, since I was not present, I don't know when they actually occurred, but in conversa-



(Testimony of Lee Knack.)

tions that I had and telephone conversations, and so forth, there was assurance to me that that position had been made clear by our bargaining representative, the Associated General [392] Contractors.

Q. Well, then, if you were not present, all you know about it is hearsay, isn't it?

A. I know that which was reported to me, sir.

Q. Well, who reported it?

A. The project manager, Mr. Ray Reed, Mr. Sam Guess, of the Associated General Contractors.

Q. They told you about it?

A. They told me of the contracts and progresses of meetings, and so forth, yes, sir.

Q. But so far as you personally are concerned, the letter to which I have called your attention is the first formal written notice that you know of where anybody on behalf of Morrison-Knudsen notified representatives of the unions that these contracts applied to the Hanford Area?

A. Insofar as written notice, it seems to me that there was a prior written letter, and I am not certain about that since I didn't write it.

Q. Well, if you didn't write it, that would be hearsay, wouldn't it?

A. That's right.

Mr. Carey: That is all, your Honor.

The Witness: I suppose.

The Court: Mr. DeGarmo. [393]



(Testimony of Lee Knack.)

### Redirect Examination

By Mr. DeGarmo:

Q. Mr. Knack, did Morrison-Knudsen Company ever become a signator of the Hanford Works Agreement, as such? A. No, sir.

Q. To your knowledge, was any member or employee of the Morrison-Knudsen Company organization ever a member of what was called the Hanford Contractors Negotiating Committee?

A. No, sir.

Q. Reference has been made here, Mr. Knack, to the question of transportation on cross-examination. The question of transportation, do you know what that refers to as related to the Hanford Project?

A. Insofar as what I know about it, Mr. DeGarmo, it is a condition which has existed prior to my acquaintanceship with conditions and circumstances at Hanford, and insofar as I can determine, it not having appeared in some—in any agreements that I am acquainted with, it appeared to be a practice factor, an established practice on the base or on the Hanford Works.

Q. Well, that is the question I want to ask you. To your knowledge, is there any provision in either the A.G.C. contract, as it existed, the January 1st, 1956, agreement, [394] the '56-'57 and '5 agreement, which is Exhibit 2, or the 1952-1954 A.G.C. agreement, which I think is Exhibit 4, or in the Hanford



(Testimony of Lee Knack.)

Works Agreement, which is not yet an exhibit in this case, providing for transportation? As you have stated, you understood it to be as a custom?

A. I know of no provision in either agreement, specific provision.

Q. Mr. Knack, on what occasions were you actually present in either Richland, Pasco, or Spokane from January 1st of 1956 to March 22nd of 1956, other than this occasion that you have mentioned on cross-examination of January 5th, 1956?

A. I arrived in Richland on the 4th of January, late afternoon, in order to be available for the afternoon meeting which I had come to Richland to attend in Pasco. In relation to any other meetings in Spokane, there was another meeting which I attended here in Spokane, the exact date I don't recall, it was in the forepart of 1956, in which we discussed the situation in relation to the project agreement at Chief Joseph Dam, and in that particular meeting—and that meeting was held at the A.G.C. offices—in that particular meeting, there was some discussion, reference made, I should say, to the question of the Hanford Project Agreement in relation to our talk over the union's position that the [395] agreement that they had negotiated with the A.G.C. excluding project agreements meant that they did not wish to waiver from that agreement in relation to our request to have the Chief Joseph Project agreement continued through to the completion of the work; that since the A.G.C. agree-



(Testimony of Lee Knack.)

ment contained a provision of no more project agreements, that they would not concede to my request to permit the project agreement at Chief Joseph to continue.

Q. I think you have already testified to that. What I want to find out, on what occasions were you personally present at either Pasco, Richland, or Spokane between January 1st and March 22nd, when the strike occurred, other than on the 5th of June occasion or June 4th or 5th?

A. January.

Q. Or January 4th and 5th, and the occasion which you mentioned relative to Chief Joseph?

A. No other times.

Q. Just those two occasions?

A. Yes, sir.

Q. All right. Who, on behalf of Morrison-Knudsen Company, was conducting negotiations with the unions, and by unions, I am referring to the defendant unions in this case, concerning the application of the agreement, the area agreement—I am referring to Exhibits 2 and 3— [396] to the Hanford Works Area between January 1st and the March 22nd date?

A. The Associated General Contractors, Heavy and Highway Chapter, Spokane.

Q. Did you personally at any time during that period negotiate directly with any representative of either the Teamsters or the Operating Engineers except on these two occasions that you have men-



(Testimony of Lee Knack.)

tioned, the January 5th and the Chief Joseph Dam, relative to Hanford Works?

A. I think in answering your question, Mr. DeGarmo, that you mentioned negotiations. In neither case were those negotiations, and in answer to the rest of your question, that no other times was I in contact with representatives of either the Operating Engineers or the Teamsters in relation to this matter in any fashion that might be called negotiations at all or in any fashion, as a matter of fact.

Mr. DeGarmo: I have no further questions at this time.

Recross-Examination

By Mr. Etter:

Q. Do I understand, Mr. Knack, that Morrison-Knudsen never did sign any bargaining agreement relating to the Hanford Works? [397]

A. That is correct, sir. The question was asked of me in relation to the Hanford Negotiating Committee.

Q. Well, the Hanford Negotiating——

Mr. DeGarmo: I think the question I asked was the Hanford Works Agreement, which is quite a different thing.

Q. (By Mr. Etter): What is the Hanford Works Agreement?

A. Well, it is the agreement that was in existence up until December 31, 1955.

Q. Well, isn't the continuing agreement, year to year, in the area where the Hanford Works is



(Testimony of Lee Knack.)

located, isn't that what they mean by the Hanford Agreement?      A. Not necessarily, sir.

Q. Beg your pardon?      A. Not necessarily.

Q. Well, then, what is your understanding of it?

A. Well, a labor agreement, as such, to be a labor agreement, must be negotiated and conformed to the terms of its negotiated principles.

Q. Yes. Were you present at a meeting somewhere in 1952 with some 200 or more contractors, unions, and the head of the project, one Mr. Shaw of the A.E.C.?

A. I was present in early 1952, somewhere around perhaps March, I think. I am not certain of that time. The numbers of people involved were not 200. There was [398] some contractors, the A.E.C. personnel, and some unions were present at some of the meetings, which extended over a period of two, three, four days, possibly.

Q. Do you remember, Mr. Shaw?

A. Yes; I do.

Q. What was his particular position at that time?

A. I'm not certain as to what it was. I understand he was the operating manager of the A.E.C. installation.

Q. Of the A.E.C. installation?

A. At Hanford.

Q. Now, can you tell me whether at that time Mr. Shaw advised that there were appropriations for further work in that area of about one hundred thirty million dollars?



(Testimony of Lee Knack.)

A. I don't recall that, sir, no.

Q. Well, what was this meeting about? Maybe you and I are talking about different meetings.

Mr. DeGarmo: Well, if your Honor please, it seems to me that I wish to object at this time to these questions upon the ground that they are not proper redirect, they are not aimed at any question which was brought out, or they are not proper recross, rather. They were not aimed at any question which was brought out on redirect. The question I asked was whether they had become a signator to the Hanford Works Agreement and [399] that, I think, is a very pointed question.

The Court: I think counsel has a right to inquire regarding that agreement.

Mr. Etter: Whether it required a signature, I wanted to point out, to become a signator.

The Court: Well, all right, go ahead. Overruled.

Mr. DeGarmo: I think there is only one way you can sign and that is to sign. I don't know of any other way.

The Court: Well, the objection will be overruled.

Q. (By Mr. Etter): Was there discussed at this meeting the future relationships of the contractors and the unions in construction work at the Hanford Project?

A. As part of the discussion, yes, it was an investigation or exploratory effort——

Q. That's right.

A. ——on the part of the A.E.C. to attempt to



(Testimony of Lee Knack.)

work out an arrangement in the nature of a project agreement or a Hanford Works Agreement, whatever it may be called.

Q. And wasn't that because Mr. Shaw stated—maybe I have the amount wrong—that they were going to commence a considerable amount of construction in there and they wanted stable labor relationships? [400]

A. The best of my recollection, sir, the meetings in which I was present involving the question of future labor relations were meetings where most of the discussion was directed by Mr. Oscar Smith, rather than Mr. Shaw.

Q. Well, is he an A.E.C. man, too?

A. Well, Mr. Smith is the—I suppose the general labor relations head or personnel head of all A.E.C. installations out of Washington, D. C.

Q. That's right, and wasn't it said at that meeting by either him or by Mr. Shaw that he wanted the unions who were going to be working there, the workmen, and the employers present, prospective or future, who were going to have work there, to undertake to reach some agreement that they could all live with? Wasn't that said?

A. There were several meetings there.

Q. Well, was that said at any of them?

A. Yes, there was a meeting in which just the contractors and A.E.C. personnel were present. Actually, the circumstance of that series of meetings was predicated on the request of the A.E.C. directly to Mr. Harry W. Morrison, our company



(Testimony of Lee Knack.)

president, to send over to Hanford a labor relations representative of the company—we had no work engaged at all—to attempt to study and [401] analyze an idea that the A.E.C. had.

Q. Of course, you had had work back there in 1948, '49, isn't that correct?

A. That is correct. I say it is correct; it is only correct insofar as my not having been with the company is information.

Q. Having these contracts, you know that your people, Morrison-Knudsen, were in there doing work back in '48 and '49?

A. I know they were doing work, sir, but the dates I don't know.

Q. And so isn't it a fact that either Mr. Smith or Mr. Shaw or one of the A.E.C. men in attendance said before they embarked on this big construction program, "One of the purposes of this meeting is for you people all to get together and determine some formula that you can live together with during this construction to avoid a lot of strikes and labor disputes." Didn't he say that?

A. Well, actually, sir, the thing that he pointed out at the beginning was that it was—as I recall, he was talking about an exploratory or trying to set up a sample type of approach in which they were going to use the Hanford Works Area as a beginning approach to such a program and hope that if it were successful there, [402] it would be used at Oak Ridge, it would be used at Arco, it would be used at other Atomic Energy installations. In other



(Testimony of Lee Knack.)

words, they were going to attempt to establish a pattern, not in relation to Hanford alone, but as a program, over-all A.E.C. program.

Q. Now, isn't it a further fact that he suggested at that time that the unions work out their particular problems and that the employers or the contractors select certain of their people to negotiate agreements that would apply to the Hanford Works?

A. The initial stages, as I recall——

Q. Well, I would like to have you answer that first, if that was mentioned. Then you may explain it, if you wish, Mr. Knack, but would you answer that?

A. Will you ask the question again, please?

Q. Yes. Did Mr. Shaw suggest that the employers set up a committee representing employers for labor relations and that the unions do the same thing so that they could, as representatives of the workers and the contractors on the job, negotiate agreements that would create a stable relationship?

A. He suggested first that a committee be set up of contractors to determine the opportunity or possibility of getting the unions together and subsequently from such an organization would be established a negotiating [403] committee of contractors on the site who would then negotiate with the unions.

Q. Do you know a Mr. S. K. O'Connor?

A. I knew Mr. S. C. O'Connor.

Q. Who was Mr. O'Connor?



(Testimony of Lee Knack.)

A. He was an employee of the J. A. Jones Company, I believe.

Q. And they are still there, are they not? They are still doing work down there?

A. I should say that he was an employee of, I believe, the Atkinson-Jones combination.

Q. Well, wasn't it a fact that shortly after this meeting that Mr. O'Connor was appointed a chairman of a representative group of contractors?

A. Yes.

Q. Isn't that correct? A. Yes.

Q. Now, do you recall his signature?

A. Yes.

Q. Is that his signature (indicating)?

A. Yes.

Mr. Etter: Would you mark this, please, Mr. Taylor?

The Clerk: Defendants' 5.

The Court: What number is that? [404]

The Clerk: 5, your Honor.

The Court: All right.

Mr. DeGarmo: May I see it, counsel?

Mr. Etter: I haven't asked to have it admitted yet. I will show it to you in just a minute.

Mr. DeGarmo: It seems to me, if your Honor please, that I am entitled to know what the witness is being examined concerning.

Mr. Etter: I haven't identified it yet or examined him at all.

The Court: After he gets it identified, if he offers it, then you may see it, of course.



(Testimony of Lee Knack.)

Mr. Etter: Yes.

Q. You recognize the signature, you said. Now, would you, without disclosing anything, would you look at the context of the letter? A. Yes.

Q. Now, having examined it, does that refresh your recollection to any extent on one of the purposes of that meeting to which I have referred?

A. The purpose of the meeting to which you referred is as I stated it to be, sir. As I say, you are speaking of several meetings.

Q. Well, I will ask you this: Was a committee of employers organized at the request of the Atomic Energy Commission [405] to represent all of the employers in the Hanford Project?

A. A committee was first asked by the Atomic Energy Commission to be organized by the employers to pursue the possibility of getting a uniform agreement with all the crafts that were involved. There were two events in that situation, sir.

Q. All right, tell me what they were.

A. The two events, as I recollect them to be, one was to attempt to establish the possibility of arriving at a committee or arriving at a collective bargaining agreement, and once having got acquiescence and concerted agreement between the unions as to that possibility, then a negotiating committee to be established to actually get into the throes of the negotiations. Because the Atomic Energy Commission was very explicit to the contractors, and I am certain they were equally explicit in meetings with the unions, that they would not consider any



(Testimony of Lee Knack.)

approach to a project agreement unless all the unions who might be employed on the project would sign the agreement and sign a uniform agreement, and until that was adjudged to be possible and meetings were held for that purpose, then negotiations couldn't proceed, and it was the Atomic Energy Commission's position that they did not wish to have negotiations proceed, until the unions themselves had come in and [406] said that they were prepared to sign, all the unions involved were prepared to sign.

Q. Now, I would like to ask you this question: Was a Hanford Contractors Negotiating Committee organized at the request of the Atomic Energy Commission to represent all employers on construction work for the Commission on the Hanford Project in negotiations with craft union representatives? Now if you can answer that yes or no, would you please do so? A. Yes.

Q. Beg your pardon? A. Yes.

Q. It was? A. Yes.

Q. Now, that negotiating committee that was organized, do you know of your own knowledge that they negotiated with the craft unions?

A. Yes; they did.

Q. And that the craft unions negotiated with them? A. Yes.

Q. And that has been a practice every year since this committee was organized in 1952, has it not?

A. Insofar as subsequent years after the agreement, we had no interest over there, we were not



(Testimony of Lee Knack.)

performing work; therefore, I cannot say as to what the conditions and [407] circumstances were subsequently.

Q. Mr. Knack, didn't you know as labor relations representative when you were over there in 1955 when you were looking into this job, what the status of the Hanford Negotiating Committee was? Are you telling us you didn't know anything about it?

A. I knew at the time that the job was awarded that there was a Hanford contract and agreement, or Hanford Agreement, in existence. I knew that it was coming up for an expiration date. [408]

\* \* \*

Mr. Etter: I don't think so.

The Court: Mr. Carey? Where has Mr. Carey gone? Well, Mr. DeGarmo.

Mr. DeGarmo: No; I have no further questions of this witness.

The Court: All right, the witness may step down, then.

I will have to recess until 2:00 o'clock today. I have a dental appointment at 1:00. Court will recess until 2:00 o'clock.

(Whereupon, the trial in the instant cause was recessed until 2:00 o'clock p.m., this date.)

2:00 o'Clock P.M., Tuesday, June 11, 1958

(Whereupon, the trial in the instant cause was resumed pursuant to the noon recess; all



parties being present as before, and the following proceedings were had:)

The Court: All right, proceed.

Mr. DeGarmo: Mr. Guess, will you come forward and be sworn, please? [410]

SAM C. GUESS

called and sworn as a witness on behalf of the plaintiff, was examined and testified as follows:

Direct Examination

By Mr. DeGarmo:

Q. Where is your place of residence, Mr. Guess?

A. Spokane, Washington.

Q. And, for the record, will you state your age?

A. 47.

Q. And what is your business or occupation?

A. I am the Executive Secretary of the Spokane Chapter of the Associated General Contractors, Incorporated.

Q. And for what period of time have you been such Executive Secretary?

A. Since January the 20th, 1954.

Q. Is the Chapter to which you have referred that which is known as the Heavy Highway and Engineering Chapter? A. It is, sir.

Q. Before we go into the details of this case, Mr. Guess, will you give us some of your background? You were born where?

A. I was born in Greenwood, Mississippi.

Q. And what formal education do you have?



(Testimony of Sam C. Guess.)

A. I was educated at the University of Mississippi and I [411] graduated in 1931 with a degree of Bachelor of Science in Civil Engineering.

Q. And following your graduation from the University of Mississippi, will you tell us in just a brief way what was the nature of your work between the time that you graduated and the period when you became the Executive Secretary of the Associated General Contractors, Spokane Chapter?

A. I was employed by the Corps of Engineers for a period of 22 years and ranged in duties and assignments from work on the lower Mississippi to flood control work on the Columbia River, and then at the inception of the war I went into the field of airport construction, and following that a period of service overseas with the Army and then back to the United States with the Corps of Engineers continuing in military construction during the Korean War.

Q. Is it fair, then, to say, Mr. Guess, that you have been engaged in the construction industry during the entire period since your graduation from the University?      A. That is correct, sir.

Q. And will you state again when you became Executive Secretary of the A.G.C., Spokane Chapter?      A. January, 1954.

Q. Will you state, Mr. Guess, as such Executive Secretary, [412] what is the nature of your duties?

A. One of the prime activities of the Associated General Contractors is in negotiation of wage agreements and the policing and business management



(Testimony of Sam C. Guess.)

relations that exist between the various labor organizations with whom we have contracts and the contractors, representing the contractors, listening to the complaints that the labor unions raise about them, about the contractors, and trying to work on the amicable relations between the two parties at all times.

Q. Well, in your representation and negotiations with the labor unions, do you represent any particular group of contractors?

A. I represent all of the members of the Spokane Chapter.

Q. Now, with reference to the Spokane Chapter, Mr. Guess, when was it originally formed?

A. The Chapter was granted for the Spokane Chapter to be organized in April of 1921.

Q. And as the chapter was originally constituted, what was the area of its jurisdiction?

A. The Pacific Coast was boundary on the west, the mouth of the Columbia to a half-way point between Spokane and St. Paul-Minneapolis, Minnesota.

Q. Without going through all of the transitions from that time until the present, will you state what is the area [413] which was within the jurisdiction of the Spokane Chapter—for the purpose of my questioning, whenever I refer to Spokane Chapter, I will be referring to the Heavy Highway and Engineering Chapter—

A. Yes, sir.

Q. —rather than the Building Trades, what was the area of that jurisdiction in 1955 and 1956?



(Testimony of Sam C. Guess.)

A. The 120th Meridian on the west and the Idaho-Montana line on the east, with the Columbia River, that is, in the state of Washington, and the northern half of Idaho County with a boundary line in Idaho.

Q. And did that area include the county known as Benton?      A. Yes, sir; it did.

Q. Mr. Guess, are you familiar with an area partially within Benton County known as Hanford Works?      A. I am.

Q. Or Hanford Atomic Products Operations, I think it is known as sometimes?      A. I am.

Q. Are you also familiar, Mr. Guess, with a document that has been referred to as the Hanford Works Agreement?

A. I have read portions of the Hanford Works Agreement, yes, sir.

Q. Have you had a copy of the contract in your possession?

A. I have since I came into the A.G.C. [414]

Mr. DeGarmo: Will you mark that as an exhibit?

The Clerk: That is the Plaintiff's 6, your Honor.

Q. (By Mr. DeGarmo): I am handing you, Mr. Guess, that which has been marked as Plaintiff's Exhibit 6 for identification. Will you examine it and first just state generally what it is, if you know?

A. This is the construction and collective bargaining agreements of the Hanford Works, State of Washington.



(Testimony of Sam C. Guess.)

Q. And is this the document popularly referred to as the Hanford Works Agreement?

A. It is.

(Exhibit 6 handed to defense counsel.)

Mr. DeGarmo: I might say that I don't expect counsel in a short period of time here to examine that rather voluminous document entirely, and I am perfectly willing that it go in under the reservation that he may check it later and if he finds it does not conform, he can state his objection at that time.

The Court: Very well. I assume that there is no objection if it is an authentic copy?

Mr. Etter: If it is an authentic copy, we have no objection. It appears to be what we have.

The Court: Beg your pardon?

Mr. Etter: It appears to be what we have. [415]

The Court: You may check it. I will provisionally admit it, with the understanding you may check its accuracy.

Mr. DeGarmo: Yes, sir.

Mr. Carey: What is the date of that?

Mr. DeGarmo: It is the 1952 agreement. It purports to be entered into on the 29th day of September, 1952, effective on all work covered as of October, and remain in effect until January 1, 1954, and then from year to year thereafter, subject to termination provisions.

(Whereupon, the said document was admitted in evidence as Plaintiff's Exhibit No. 6.)



(Testimony of Sam C. Guess.)

The Court: May I see that?

(Exhibit handed to Court.)

This, Mr. DeGarmo, I take it, is a form of contract; that is, it isn't any particular signed contract?

Mr. DeGarmo: Yes; I don't think that is a signed contract, that is a form of a contract. I think counsel will agree with me that the way this thing was handled there, that they had a preliminary statement which was applicable to all trades and then there were addendums attached to it for the various crafts and each of the crafts signed the addendums and there were some [416] differences in terms with regard to the separate crafts.

Mr. Etter: That seems to be substantially correct, your Honor.

The Court: Yes, I notice the addendum is signed here. There are copies of what purport to be signatures on the addendum but not on the main contract itself.

Q. (By Mr. DeGarmo): Mr. Guess, will you state if Morrison-Knudsen Company, Incorporated, is a member of the Associated General Contractors of America, Spokane Chapter?

A. Morrison-Knudsen is a member of the Spokane Chapter.

Q. And when, if you can tell us, did it become such a member? A. February of 1955.

Q. Mr. Guess, in certain of the testimony which has preceded yours, reference has been made to the



(Testimony of Sam C. Guess.)

subject of the furnishing of the transportation at Richland. Are you familiar with that particular practice or custom, or whatever it may have been, which was in existence there?

A. Yes; I am familiar with it and the history of it.

Q. Will you tell us what first is meant by the term "transportation" as you understand it? [417]

A. The transporting of personnel, of the crafts, working for the contractor from the parking area outside of the barrier into the work site; the furnishing of bus or vehicular transportation for those individual craftsmen.

Q. Now, I wish to ask you, Mr. Guess, if the furnishing of such transportation, to your knowledge, is provided for by either the A.G.C. agreement, and I am referring now to either the 1952-'55 agreement or the '56 to '58 agreement, with the Teamsters or the Operating Engineers, or by the Hanford Works Agreement, which is the last document here?

A. To my knowledge, neither the A.G.C. or the Hanford Works Agreement provides for the furnishing of transportation.

The Court: Neither one, you say?

A. Neither one.

The Court: The main entrance into the reservation is through North Richland, isn't it?

A. Yes, sir.

The Court: Although there is one up—



(Testimony of Sam C. Guess.)

A. Yakima side.

The Court: —from Yakima down?

A. Yes, sir.

The Court: But most of the workmen go in through the North Richland barrier, do they not?

A. That is correct. [418]

The Court: And the workmen do not drive their own private cars into the barrier into the area, as a rule, do they?

A. They do at the present time.

The Court: They do now. Did they at the time involved here?

A. The workmen coming in from North Richland, 40 per cent of them were riding the busses at that time, and all of those people coming in from Yakima and Sunnyside were coming in their private cars.

The Court: And the busses went through this barrier and delivered the workmen inside?

A. Those that rode the busses were going through the north barrier.

The Court: Of course, the area in there is quite large, isn't it?

A. Yes, sir.

The Court: About how far is it from the North Richland entrance up to the Moxee entrance? Is that 20 miles or more?

A. It is in excess of 35.

The Court: Oh, I see. Yes, all right.

Q. (By Mr. DeGarmo): The testimony which



(Testimony of Sam C. Guess.)

you have just given in response to the Court's questions, Mr. Guess, did that relate both to the years '55 and '56 up until [419] the time of the work stoppage at Richland?

A. The A.G.C. agreement has never furnished bus transportation either in 1950 to '55 or '56 to '58, and, to my knowledge, the Hanford Agreement has never stipulated the furnishing of transportation.

Q. No; I am asking about the workers driving their private cars into the area—by the area, I am referring to the restricted area—did that apply both to '55 and '56?

A. Mr. DeGarmo, to my knowledge, it didn't become completely clear to me until the strike period of last year just what transportation conditions were behind the barrier.

Q. Well, your testimony is you are not in a position to state that?

A. I am not in a position to state.

Q. As to the '55?                      A. As to the '55.

Q. But are you able to state as to what the condition was immediately preceding the time when the strike took place?

A. There was a survey made and a report given to me that immediately prior to the strike, that 40 per cent of the people were using busses and 60 per cent of the people were not using busses going behind the barrier.

Q. Now, was that 40 and 60 of those entering from the North Richland entrance or 40 and 60 per



(Testimony of Sam C. Guess.)

cent of the entire [420] working population within the area?

A. That was in the entire working population.

The Court: Did your survey cover construction and maintenance people both, or just construction?

A. Just construction.

The Court: Just construction.

Q. (By Mr. DeGarmo): As of the fall of 1955, Mr. Guess, can you state what contractor members of the A.G.C., Spokane Chapter, were engaged in construction work in the Hanford Works Area?

A. To my knowledge, the Sound Construction Company was the only contracting firm that was working behind the barrier when I first came to work for the A.G.C.

The Court: I didn't get your date, Mr. DeGarmo.

Mr. DeGarmo: I asked as of the fall of 1955.

The Court: All right, thank you.

Mr. Etter: The answer isn't quite responsive.

A. No; it is not.

Mr. DeGarmo: No; it is not.

Q. Can you tell us what the situation was in the fall of 1955 and before Morrison-Knudsen Company entered the area as a contractor?

A. I have no knowledge that any Spokane Chapter member was working behind the barrier at that time.

Q. Were there contractors working within the area at that [421] time?



(Testimony of Sam C. Guess.)

A. There were contractors working behind the barrier at that time.

Q. And is that from your personal knowledge?

A. That is.

Q. Can you name some of them who were working within the barrier at that time and who were not members of the A.G.C.?

A. The—let's see—I would like to make a correction in my statement, Mr. DeGarmo. The J. A. Jones Company had become a member of the Spokane Chapter during 1955. The companies that I know that were working back of the barrier were the Lewis Hopkins Company, who is not a member; the L. H. Hoffman Company, who is not a member. I do not have knowledge of any other firms working back there.

Q. Now, Mr. Guess, in the fall of 1955, did it come to your knowledge or attention that there was a possibility, let's put it, that the Hanford Works Agreement might not be continued beyond the end of that year?

A. That is correct. On September the 21st, Mr. Ken McCaffree, who was the Executive Secretary of the Hanford Negotiating Committee, came to Spokane and had lunch with the chairman of the labor committee of the Spokane Chapter, one member of the labor committee, [422] and myself, and at that time he told us——

Q. I don't wish you to repeat hearsay testimony, Mr. Guess. It was from Mr. McCaffree that you obtained the information?



(Testimony of Sam C. Guess.)

A. That is correct, sir.

Q. At some time later in the year of 1955, did you receive any information that the contract was to be terminated, as differentiated from the previous information which was merely a possibility?

A. I received a carbon copy of a letter dated December 29th in which it announced the intention of the negotiating committee to terminate their then existing agreement.

Mr. DeGarmo: May I have the court file for a moment, please?

The Court: Yes.

Q. (By Mr. DeGarmo): Calling your attention, Mr. Guess, to a document which is attached to the Plaintiff's Requests for Admission under Rule 36 as Exhibit F, I wish to ask you if that is the copy of the document that you stated you received through the mail? A. That is, sir.

Mr. DeGarmo: May I have now Plaintiff's 2 and 3?

(Exhibits handed to Mr. DeGarmo.)

Q. Mr. Guess, I am handing you Plaintiff's Exhibit 2 and ask [423] you if you are familiar with that document? A. I am, sir.

Q. Did you participate in the negotiation of the document? A. I did.

Q. And was that a document which was in effect as of January 1st of 1956? A. It was.

Q. And, likewise, I am handing you Plaintiff's Exhibit 3 and ask you if you are familiar with that



(Testimony of Sam C. Guess.)

document? A. I am.

Q. Did you also participate in the negotiation of that document? A. I did, sir.

Q. And was it a document which was in effect on the same date of January 1, 1956?

A. Yes, sir.

Q. All right, now, after you had received the copy of the letter to which you have referred and which indicated that the Hanford Works Agreement was terminated as of December 31st, 1955, will you state first if you did anything as the Executive Secretary of the Associated General Contractors, Spokane Chapter, in connection with the application of the documents, Exhibits 2 and 3, that is, the Teamsters' agreement and the Operating Engineers' agreement to the Hanford Works [424] Area?

A. The preliminary negotiations on documents 2 and 3 in the fall of 1955 started out——

Q. Well, now, I don't care what the preliminary negotiations were; I want to know what you did after January 1st of 1956, when you learned that the Hanford Works Agreement was terminated?

A. The labor committee met in Spokane and discussed the putting into effect——

Mr. Etter: Just a moment. Is this in the presence of any of these defendants?

Mr. DeGarmo: I was just going to ask what labor committee he was referring to.

A. The Spokane Chapter labor committee.

Q. That is the labor committee of the Spokane



(Testimony of Sam C. Guess.)

Chapter of the A.G.C.?            A.    Correct.

Q.    There were no representatives of either the Teamsters or Operating Engineers?

A.    No, sir.

Q.    All right, I only want you to tell us what you did insofar as you had direct contact with representatives of the Teamsters and the Operating Engineers after January 1st of 1956, when you had learned that the Hanford Works Agreement was terminated?

A.    We had a meeting in my office, at which time the [425] agreements were discussed.

Q.    What was the date of the meeting, if you can give it, and who were present?

A.    As regards the putting into force and effect of the Teamsters agreement that had just been negotiated. One of the men present was Mr. Gene Whitney, business agent of the local chapter—or local Teamsters, and Mr. Sewell Davis of the Pasco, and at that time Mr. Davis complained that a lot of their people were going to be hurt——

Mr. Carey:    Just a moment, your Honor. Counsel asked the witness to fix the date of that meeting and he never did fix it.

A.    It was in the early part of January and I believe it was before January the 8th, the exact date of which I do not know.

The Court:    1956?

A.    1956.

Q.    (By Mr. DeGarmo):    All right, now, tell us what occurred at that meeting.



(Testimony of Sam C. Guess.)

A. We told Mr. Davis at that time that we were prepared, under the terms of our agreement, to sit down and talk a hardship case with anybody that was hurt, and that we had expressed during negotiations the idea and the mutual consent that we would sit down and talk hardship [426] in the event somebody desired to talk hardship, and Mr. Davis said that he felt that his people were going to be hurt. And they went ahead in the agreement. Although not completely printed and proofread, the agreement went into printing shortly after that. Although the original document, negotiated between the A.G.C. and the Teamsters had been signed in my office on December the 19th, we had not had a printed copy and the proofs were not read until after this meeting with Mr. Sewell Davis, and so we went ahead and had those copies printed and they withdrew their objection and he went back to Pasco.

Q. All right, now, were there any further negotiations with either the Teamsters or the Operating Engineers relating to the carrying into effect of the A.G.C. agreement, and I am talking about Exhibits 2 and 3, in the Hanford Works Area after January 1st?

A. Mr. DeGarmo, it is very difficult to answer that specific yes or no question or to delineate it, the putting into effect of our agreement, and since the termination of the Hanford Agreement, there were many questions that had arisen. We talked several times about it, and on March the 1st, when Mr.



(Testimony of Sam C. Guess.)

Knack was in Spokane, we had representatives——

Q. Go ahead. [427]

A. ——we had representatives of the labor organizations, the Operating Engineers and the Teamsters, in my office, and part of the negotiations or part of the conversations that day was the discussion on Chief Joseph Dam and what happened at the expiration of the special job agreement, and then we had a discussion on what was going to happen or what was happening at Hanford, and Mr. George Seabeck of the Spokane Chapter asked the question, “Does the job agreement exist when a project is completed or does the project agreement continue as long as a job is going regardless of conditions?” and it was agreed by all hands present that when a project was completed, that the job agreement died, and because of the urging of the A.E.C. staff, Mr. Henry Thurston in particular, the Spokane Chapter and the contractors working behind the barrier did nothing to upset the conditions because of the very critical nature of the work going on back there, and we had hoped for an orderly transition during that period of time when the contractors could get into full swing and into effect with the contracts as exhibited in 2 and 3.

Q. Now, did you have any other meetings after March 1st, and I want only meetings at which there were present representatives of the Teamsters or the Operating [428] Engineers, and if they were not both there I wish you would tell us?



(Testimony of Sam C. Guess.)

A. On the morning of March 10th the representatives of the Operating Engineers and the Teamsters convened with members of the negotiating committee of both the Spokane Chapter and the Eastern Washington Builders Chapter of A.G.C., at which time the conditions and contract that existed at the Hanford site were present and took part in the discussion. In addition to members of the Operating Engineers and the Teamsters, there were two representatives of the Atomic Energy Commission present and Mr. Louis Zeman, of the Federal Mediation and Conciliation Service, and the chairman of the labor committee of the Spokane Chapter asked the various parties as to what their status was and what they believed the situation to be and each person had an opportunity to express themselves.

Q. Mr. Guess, what question was raised at any of these meetings that you have mentioned now, the one of March 1st, the one of March 10th, as to whether the A.G.C. agreements, Exhibits 2 and 3, were to be effective? What was the area of discussion, in other words?

A. The area of discussion was the effect of the amount of take-home pay and which would possibly be changed by the going under the Spokane Chapter's agreement. [429]

Q. Well, in what particular respects would it have been changed?

A. Well, it would require—if the agreement at Hanford or the conditions under which Hanford had been working under were terminated and the people



(Testimony of Sam C. Guess.)

were no longer paid isolation pay and were no longer furnished bus transportation, it would require that they accept as part of their remuneration the travel pay negotiated under agreements 2 and 3, and it would be that they would furnish their own transportation rather than being furnished transportation by the contractor at the job, and they felt that to eliminate one or the other would make some difference in the amount of money that a man could take home. In other words, he would have to buy gasoline and oil, whereas he had been furnished transportation in the past.

Q. All right, now, were any other meetings held after March 10th?

A. Yes, sir, another meeting was held on March the 16th. Let me correct, sir. I believe the next—let's see—the next meeting at which there were present Teamsters, Engineers, and Cement Masons, representatives of the Spokane Chapter of A.G.C., representatives of the Building Chapter of the A.G.C., representatives of the Hanford Atomic Works, and the Mediation Service, was [430] held on March the 16th in the Federal Courtroom at Spokane.

Q. In Spokane. What occurred?

A. Courthouse, excuse me.

Q. You were present? A. I was present.

Q. What occurred at that meeting?

A. Mr. Zeman, the Federal Mediation Service, opened the meeting by calling upon Mr. Rossman, who summarized the situation, stating that the old



(Testimony of Sam C. Guess.)

Hanford Agreement was terminated by the contractors at Hanford and that other crafts had settled for the Area agreements and these crafts which had settled were stated to have equal or better travel pay considerations on the outside than on the project, and that the Teamsters and Engineers would now lose money if they accepted the agreement, the Area agreement, on the project, and the Hanford contractors had made the proposition of canceling the agreement and cutting off the busses and it had been talked about during negotiations at A.G.C., and he acknowledged that the A.G.C. labor committees had proposed a special hardship condition and that the proposal had been taken to the people at his monthly meetings and that they had voted against it.

Q. This was Mr. Rossman? [431]

A. That was Mr. Rossman. And he stated what their demands were and they were demanding a continuation of the isolation pay, plus the busses and plus the fringe benefits given under the A.G.C Area agreement.

Q. Were these demands being made notwithstanding the Area agreements which were then in effect?

A. That is correct, sir.

And then the second person called upon by Mr. Zeman was Mr. Sewell Davis, who stated—

Q. He was in the Teamsters?

A. He was the Teamsters' business agent, local 839, and he stated that he had taken the proposition that we had made to the meeting of March the 10th back to his people and that 65 members had voted



(Testimony of Sam C. Guess.)

against the proposition and that 3 had voted to accept it, and the membership didn't instruct Mr. Davis on any proposal, but he thought that they wanted more or less the same thing that they have—or had had under the Hanford Works Agreement, plus all the benefits of the A.G.C. agreement.

Q. Now, you have mentioned twice in your testimony some proposal that had been made on behalf of the A.G.C. and its members to the Teamsters and Operating Engineers as the result of the March 10th meeting. Can you tell us what that proposal was? [432]

A. We offered that all new work and all employees hired after March the 12th by the construction contractors at Hanford would be covered by the A.G.C. agreements.

The second part of the proposal was that the Operating Engineers and Teamsters on the roll of the contractors presently performing work on the project prior to March 12th would receive a daily travel allowance of \$2.62½ until such contracts were completed, that is, the presently existing work down there, and then on January the 1st, 1957, the Teamsters and Operating Engineers would receive a \$2.00 travel allowance.

It was this agreement—or this proposition that was made and which was turned down.

Q. Would that have meant some modification of the Exhibits 2 and 3?

A. That would have, sir. We were prepared to make, if it wanted to be added under a Schedule B



(Testimony of Sam C. Guess.)

or letter memorandum or memorandum of understanding, some kind of an agreement. We were willing to make concessions down there at that time.

Q. And do I understand that that proposal was turned down by both the Teamsters and the Operating Engineers at the meeting on the 19th, was it, or 16th?

A. That is correct. Reported back to us on March 16th that [433] the members had turned it down.

Q. All right, now, what further was done in an effort to keep this situation from blowing up?

A. We requested that the contractors presently working at the Hanford Works continue to pay the isolation pay and the busses and furnish busses to the personnel until such time as an agreement could be reached.

Q. All right, what did you do in a further endeavor to reach some agreement, and again I am referring to only direct contacts had by you with the two unions with which we are interested, the Teamsters and the Operating Engineers or their representatives?

A. We offered to arbitrate under the disputes clause of the agreements reached in Exhibits 2 and 3, and we were told that the members present could not give us an answer at that time.

Q. Now, let's find out what meeting that was that offer was made and who were present, if possible?

A. That offer was made on March 16th, at which time Mr. Al Crowder of the Teamsters, Mr. Sewell



(Testimony of Sam C. Guess.)

Davis of the Teamsters, Arthur Rossman of the Engineers, R. Davis of the Engineers, B. C. Fulton of the Engineers, William Dunn of the Engineers, R. L. Hollingsworth, Engineers; Charlie Knapp, Cement Masons; Max Sather, Carl Carbon, George Sebeck, Al Halvorson, Cham Helvey, [434] Sam Guess, and Mr. Mack Reynolds for management, and Mr. McCaffree—he was the Executive Secretary—Mr. Bacon, Mr. Rutt, Messrs. Peterson and Zeman of the Federal Mediation and Conciliation Service.

Q. You say that was an offer to arbitrate?

A. That was an offer to arbitrate.

Q. And what response, if any, did you get to that offer?

A. We were told by Mr. Davis of the Teamsters that he would have to clear through his legal department in Seattle before he could go further on arbitration.

We were told by Mr. Rossman that he wanted an opportunity to consult legal counsel.

Q. And when, approximately, was that information given to you?

A. It was given to us during the afternoon of March 16. It was—Mr. Davis made his statement between the time of 12:47 and 3:45, and Mr. Rossman made his statement—let's see—before 12. Exactly the time, I don't know.

Q. Now, at some later date, did you receive a definite word from either of these gentlemen or from representatives of their organizations as to the request that they arbitrate under the arbitration provisions of the A.G.C. agreements?



(Testimony of Sam C. Guess.)

A. On March the 21st, another meeting in mediation, attended by both Mr. Peterson and Mr. Zeman, Mr. Zeman [435] doing most of the mediation, was held, and at that time Mr. Rossman of the Engineers, Mr. Bill Dunn, Mr. Sewell Davis, Mr. Charlie Knapp, were present. Management was represented by Mr. Sather, Mr. Helvey, Mr. Carbon, Mr. McReynolds, and Mr. Guess.

Q. What occurred at that time?

A. Mr. Davis stated that he had not been able to talk to his attorney, Mr. Sam Bassett, and that they had talked to one of the assistants, and the Teamsters refused to arbitrate the issues at Hanford because of several reasons. He stated one of the reasons was that it was doubtful that it is legal for a new agreement to be arbitrated.

Mr. Rossman stated that he had thoroughly talked it over with his attorney and, because management had transferred their bargaining rights, it did not necessarily establish the Area agreement on the project, and since the Hanford contractors have negotiated the area agreements for a number of years, he felt that they should continue to do so, although in the face of admitting that the Hanford Area agreement had been cancelled.

Q. Well, now, after the refusal of both the unions to arbitrate as to some arrangement, what was done?

A. A great deal of discussion took place during the [436] remainder of the morning and, after a caucus or a luncheon break, the full meeting re-



(Testimony of Sam C. Guess.)

sumed and the chairman of the Spokane Chapter, Mr. Sather, stated that he felt that we had made labor a fair proposition and that they should take the matter back to their people and they should go to the A.G.C. agreements and arbitrate their grievances, with the understanding that any benefits given by the arbitrator would be retroactive to the time that the arbitration began. Mr. Rossman stated of necessity he must take it back to his people, and Mr. Davis stated that, "I think you have a work stoppage on your hands. Our people will not work."

And it was again asked that if they didn't think it was a fair thing, to arbitrate the matter, and Mr. Davis answered, "No, that would be the simplest thing in the world to me. These people told us that they are just not going out there when the busses are off." And it was after that that the meeting was adjourned. Mr. Zeman made the closing remarks, a very brief summary, and the meeting came to a complete impasse and was adjourned.

Q. Was anything said at that meeting as to when the absolute terms of the A.G.C. agreement would be made effective there?

Mr. Carey: May I have that question read again? [437]

(Question read.)

A. It was stated several times during the meeting that there was no other agreement under which people could work; that a considerable number of the local unions had gone under Area agreements,



(Testimony of Sam C. Guess.)

the Hanford Works Agreement had been terminated, and for that reason they would either work under the A.G.C. agreement or there was no agreement to work under, and we had the feeling——

Q. (By Mr. DeGarmo): Well, now, Mr. Guess, I don't want you to give your impression.

Mr. Etter: Just let him continue.

Mr. DeGarmo: I am perfectly willing, if you want it.

Mr. Etter: He said a couple of interesting things, I don't mind him continuing there.

Q. (By Mr. DeGarmo): All right, Mr. Guess, go ahead.

The Court: I think we should keep within the rules of evidence here, not express feelings.

Mr. DeGarmo: I thought I was being proper, I didn't intend to be out of line.

Q. What occurred there then after this meeting? You say that the meeting of March 21st ended in an impasse; what occurred then?

A. There were no busses on the job the next day, and, to my [438] knowledge, no one but—well, the crafts involved did not work, Mr. DeGarmo. I understand that through telephone conversations with the area, with Mr. Thurston of the A.E.C. and with the project manager on the job.

Q. You weren't down there?

A. I was not down there the following day.

Q. All right, I don't want you to testify what you don't know.



(Testimony of Sam C. Guess.)

The Court: What was the date of this when you saw you couldn't agree?

A. The 21st was the impasse.

The Court: March?

A. March 21st.

Q. (By Mr. DeGarmo): Are you familiar personally with the fact that there was a work stoppage at the Hanford Works Area subsequent to March 21st?

A. I was not on the project and I only know what was reported to me from the project, that there was no work in progress.

Q. Well, you have participated in several meetings since then, have you not, Mr. Guess, at which the fact of the work stoppage was one of the questions that was discussed? A. I have, sir.

Q. Including the Ching panel hearing? [439]

A. After a considerable amount of discussion, negotiations back and forth, appeals to all of the Internationals concerned to put the people back on the job, we were instructed by the Atomic Energy Commission to accept the Ching panel as a mediation service to get the work started again, and after several days of negotiations, we finally had the Ching panel out here and the people went back to work after that.

Q. Now, you have mentioned in your testimony, Mr. Guess, in several instances the presence at some of these meetings of representatives of the Federal Mediation Service? A. That's right, sir.



(Testimony of Sam C. Guess.)

Q. Can you state for us on what basis or how these people came to be present at these meetings?

A. Before the meeting on March the 10th, I had a conversation with Mr. Zeman, explained to him the conditions which had arisen at Hanford, invited him to sit in as an observer at that time. Mr. Zeman accepted the invitation and during this meeting he stated that he had not been officially ordered in but he was there as an observer and to offer his assistance and the assistance of his office, anything he could do to help get the situation straightened out.

Q. Well, the thing I wanted to make clear, Mr. Guess, up [440] until the 21st of March, was the Federal Mediation and Conciliation Service actually and officially in the picture there in connection with negotiations?

A. They came into the picture originally on March the 16th, when Mr. Peterson came to Spokane.

Q. Now, at whose instance, if you know, did he arrive?

A. Mr. Peterson did not tell me when he called me from Seattle requesting this meeting be set up. He did not tell me specifically who had asked him in.

Q. Did the Associated General Contractors, Spokane Chapter, request him to intervene?

A. We did not, sir.

Q. And at the subsequent meetings, then, they were not there at your instigation by your—I mean the A.G.C., Spokane Chapter?



(Testimony of Sam C. Guess.)

A. They were not there at the A.G.C.'s instigation.

Q. I want to go back just a minute, Mr. Guess. Was there any inter-relationship—I do not mean contractually; I mean as far as terms or phraseology or wages, working conditions—between the A.G.C. Area agreements and the Hanford Works Agreement? A. Will you restate that?

Q. Was there any inter-relationship in any way between the A.G.C. agreements—I am referring now to the agreements negotiated through the Spokane Chapter—and the [441] so-called Hanford Works Agreement as far as wages or working conditions were concerned?

A. The Spokane Chapter of A.G.C., together with the Eastern Washington Builders Chapter of A.G.C., negotiated all of the wages arrived at with the basic crafts in the Inland Empire in the year in which we cover. It has always been a time lag of thirty days between the time of completion of negotiations between Spokane and the unions and the adoption of the wages at the Hanford Project. It has been the avowed and announced intention of the government, through the Atomic Energy Commission, not to set the wage pattern but to follow, and for that reason there was a time lag delay.

Q. Well, then, were the wages which were established by the A.G.C. for the various crafts the same wages which were provided for in the Hanford Works Agreement?



(Testimony of Sam C. Guess.)

A. To the best of my knowledge, that is the case, they always adopted our wage rates.

Q. Now, there were in the Hanford Works agreements some special conditions, such as isolation pay and travel and such things, that were not in the A.G.C. agreement, is that correct?

A. There was no isolation pay in the A.G.C. agreement; there was no travel pay in the A.G.C. agreement until January 1, [442] 1956.

Q. And do I understand that the provisions of Exhibits 2 and 3, which are here, relating to travel and which contain these two maps showing areas in which travel pay shall be applicable, were new in the 1956-58 agreements? A. That is correct.

Q. They were not in the previous agreement, which has been introduced in evidence here as Defendants' Exhibit No. 4?

A. There was no travel provision or no travel map there.

Q. Mr. Guess, in the continuation after January 1st of 1956 and during the period of these negotiations which you have testified to of the isolation pay and bus transportation, which had been in effect under the Hanford Works Agreement, what conflict, if any, was there in the continuation of those practices and the observance of the A.G.C. agreements?

A. To continue the isolation pay under the Hanford agreement would have been direct conflict, because it would have meant a separate job agreement. The furnishing of busses is something that the contractors have never entered into, desired very



(Testimony of Sam C. Guess.)

strongly, because of all of the ramifications of getting everybody into a bus and furnishing busses. They desired never to enter into any arrangement for furnishing transportation or busses, [443] and it was in the agreement to furnish, to pay a man on a zone basis for traveling and he had to travel in his own conveyance.

Q. Were the payments, which were continued pending negotiations attempting to arrive at some satisfactory solution of the application of the agreements to the Hanford Works, were they amounts in addition to that which were provided for under the A.G.C. agreements?

A. They were in addition to that, but at that time, no one to my knowledge was paying our regular travel time as provided in the travel pay, provided in our agreements. They were paying isolation pay and furnishing busses outside of our agreement.

Q. Well, was that a greater amount than they would have been required to pay if they had followed the A.G.C. agreements? A. It was, sir.

Q. So that it was something above and beyond, rather than subtracting from?

A. That is correct, sir.

Q. Why were those payments continued during that period of time, Mr. Guess?

A. In an effort not to upset the labor conditions at Hanford and to stop work. We had been told that if we were to stop them, that there would be a work stoppage. [444]

Q. Who told you that?



(Testimony of Sam C. Guess.)

A. The business agents of the local unions, the Operating Engineers and the Teamsters.

Q. And when you did stop them, what occurred?

A. A work stoppage occurred.

Q. Mr. Guess, have you had an opportunity and occasion to examine the provisions of the contract between Morrison-Knudsen Company and the Atomic Energy Commission, copy of which is here in evidence as Exhibit 1?

A. I very briefly read over the contract at one time.

Q. Are you familiar with the nature of the work which is provided for under the contract?

A. In detail, sir.

Q. I ask you, Mr. Guess, whether the work which is provided for there is work within the jurisdiction of the A.G.C. Chapter, Spokane Branch, of the Heavy and Highway Engineering?

A. It is within the Engineering scope of the work. In other words, in the original charter of the A.G.C. which we were given, Engineering work is described as pumping plants, and this was for a pumping plant addition.

Mr. DeGarmo: Pardon me just one moment, your Honor.

The Court: All right.

Q. (By Mr. DeGarmo): Mr. Guess, during the same period that [445] we are talking about here of January 1, 1956, to March 22nd, 1956, were there, to your knowledge, any contractors working on the



(Testimony of Sam C. Guess.)

Hanford Works Project under the so-called Area Agreements or A.G.C. agreements?

A. There were certain works being carried on on the project for the Corps of Engineers, Walla Walla District, and those people working for contractors under the Corps of Engineers were working under the area agreements.

Q. And was that within this same Hanford Works Area?

A. Behind the barrier within the Works Area.

Mr. DeGarmo: You may examine.

#### Cross-Examination

By Mr. Etter:

Q. Start from the last question. The agreements that were in existence with the Corps of Engineers were not A.E.C., were they?

Mr. DeGarmo: I think that question answers itself.

Mr. Etter: Well, I just want to make the distinction, if I am permitted to do so, counsel.

A. No, sir, Corps of Engineer contracts and A.E.C. contracts are not the same, no.

Q. (By Mr. Etter:) They are not the [446] same?

A. No.

Q. These were direct contracts between the Corps of Engineers and contractors who were members of A.G.C.?

A. That's right.

Q. They were not contracts, for instance, that



(Testimony of Sam C. Guess.)

were let by A.E.C. subject to conditions that A.E.C. imposed as to contractors in their area, isn't that correct?      A. That is correct.

Q. Now, Mr. Guess, these documents, this Hanford Area Agreement, I assume, that has been placed in evidence has come in as part of the records that you maintain as the secretary of the A.G.C., is that correct?      A. That is correct.

Q. Now, you have had a chance, have you not, since you have been there to see and to examine A.G.C. agreements that I have here?

A. I have not seen nor examined those, to my knowledge.

Q. You have not?      A. No, sir.

Q. You have never had any occasion to examine any A.G.C. agreements beyond a couple of years after you came there, is that it?

A. I had occasion to work with the agreement that was written in 1950 and changed yearly thereafter, and that is the only copy of the agreement. I believe that [447] is the blue copy sitting on the desk there.

Q. So as to these agreements, you have never seen any of them before?

A. Not to my knowledge.

Q. I see. And you don't know whether there are any copies of them in your official files?

A. I have never seen a copy in my office, Mr. Etter.

Q. Mr. Warn was your predecessor?

A. That is correct, sir.



(Testimony of Sam C. Guess.)

Q. And he has no file of these contracts that you know of, sir?

A. Mr. Warn practically cleaned the entire office before I went in.

Q. I see.

A. So far as historical records are concerned, I have practically nothing.

Q. And you are referring to a contract of '49 as an historical record, I assume?

A. Yes, sir.

Q. Now, M-K, as I understand it, became a member of the Chapter in February of 1955?

A. Correct, sir.

Q. And you, having been employed in some capacity for A.G.C., it came to your knowledge that there was a furnishing of transportation inside the barricade of [448] the work site and isolation pay in the Hanford Works Agreement?

A. Correct.

Q. And you were aware of that, were you not?

A. Correct.

Q. Now, as I understand it, there never was any time that there was any similar provisions in any of the A.G.C. contracts that had been negotiated over the area which you described as being within your jurisdiction; that is, conditions such as I have mentioned, that is, isolation pay or transportation by busses?

A. There was neither transportation or isolation pay in any A.G.C. contract up to 1956.

Q. No. And during a period of time from 1950



(Testimony of Sam C. Guess.)

to 1955, there was no such provision in the A.G.C. agreements, a copy of which I have placed in evidence?      A. No.

Q. During that time, however, from 1952, at least, to 1955, there were such provisions made at the Hanford Works?

A. I understand that the provision of isolation pay was a portion of the written contract and that the furnishing of busses was a usage that had grown up there.

Q. That is correct. That existed during the same time as your contract or the contract that is in there extending from 50-55 was in existence? [449]

A. That is correct.

Q. And at that time during the period from 1950 to 1955, were any contractors who were members of your Chapter doing work within the Hanford Area?

A. As I stated, the Sound Construction Company was doing work when I first went to work for A.G.C. They were a member but did not pay any dues into the Spokane Chapter while I was employed, after I came to work. Their name was on the list, but it evidently was a carry-over.

The J. A. Jones Company did join the Chapter during 1955, so those two organizations were working there.

Working on the project, the Murphy Brothers Construction Company, but they were doing work as a subcontractor for another contractor on the base.



(Testimony of Sam C. Guess.)

Q. There were subcontractors during that period of time working on the Hanford Area who were members of your Chapter, were there not, 1950 to 1955?

A. Murphy Brothers Construction Company is the only subcontractor that I remember down there.

Q. I see. Now, when they were working on that project, was the provision made for their employees to receive isolation pay and transportation?

A. No, sir. They were working for another firm on an Army [450] camp site.

Q. An Army camp site? A. Right.

Q. Not an A.E.C. contract?

A. Not an A.E.C. contract.

Q. When J. A. Jones was working, were they working under an A.E.C. contract?

A. They were working under an A.E.C. on the main amount of construction.

Q. And is it not a fact that they were paying isolation pay and they were providing bus transportation? A. They were.

Q. They were? A. Yes, sir.

Q. Although they were a member of your Chapter?

A. They joined, as I say, latterly in that period.

Q. Well, as I understand, you said they were on before that and then you qualified it and said you hadn't got any dues but carried them on the list until they rejoined in 1955; isn't that right?

A. I received one payment from them, yes, sir.

Q. I see. Now, as I gather, then, in 1955, the



(Testimony of Sam C. Guess.)

only two contractors who were doing work within the Hanford Area who were members of your Chapter were the two companies that you have mentioned; in other words, the plaintiff in [451] this action and the J. A. Jones Company, is that right?      A. Right.

Q. Do you know how many other contractors were then performing work on the Hanford Project at the time?      A. I do not.

Q. Beg your pardon?      A. I do not.

Q. Well, do you know whether there were any others?

A. Yes, I do know that there were others from newspaper accounts, from conversations with people on the Project.

Q. There were numerous contractors, isn't that right, that were working down there from '50 to '55?      A. Right.

Q. Beg your pardon?      A. That is correct.

Q. That is correct. And there were other contractors working there and the only two who were members of your Chapter were these two, the plaintiff and J. A. Jones?

A. To the best of my knowledge, Mr. Etter, that is all.

Q. That's right. Now, when did negotiations commence between your Chapter and these two unions—I am referring specifically to the Teamsters 839 and 370 of the Operating Engineers; when did negotiations start [452] preceding the



(Testimony of Sam C. Guess.)

December 31st termination date set out in the exhibit which is in evidence, the five-year contract?

A. Negotiations with the Teamsters Union were begun on October the 6th, 1955, and with the Operating Engineers they were begun 9:30 a.m., Wednesday, October the 19th.

Q. Of nineteen—— A. 1955.

Q. ——fifty-five. And those negotiations continued, did they not, up until the contracts were signed, that is, the contracts of November—I think November 24th, or is it December?

Mr. DeGarmo: It is December.

Q. (By Mr. Etter): December 19, 1955, and December 24th. Those are the dates, are they not, that the contracts were signed, respectively, with the Engineers—or, rather, the Teamsters—the earlier date, the Engineers the latter date?

A. That is correct, sir.

Q. Now, as I understand it, prior to the time that you had received any notice in October, and I understand that your contracts, if they do not so provide, at least the Labor-Management Relations Act did, for a sixty-day notice, is that correct?

A. That is correct, the contracts provided for a sixty-day opener. [453]

Q. A sixty-day opener. Now, prior to the time that you had received any opener notice from either the Teamsters or the Engineers, you had a visit from this fellow McCaffree, as I understand it? You said September, I assume that is prior to October?



(Testimony of Sam C. Guess.)

A. September the 21st was the date that Mr. McCaffree came to Spokane.

Q. And who was McCaffree?

A. He was Executive Secretary of the Hanford Negotiating Committee.

Q. He was the Executive Secretary of the Hanford Contractors Negotiating Committee?

A. That's right.

Q. Is that correct?                      A. That is correct.

Q. And you had a visit from him in September and I think you said that he told you there was a possibility that those contracts down there were going to terminate?                      A. That is correct, sir.

Q. Well, what did he say there? Can you tell me just about how it was that he told you about this? How did it come up? Did you bring it up or did he?

A. Mr. McCaffree, on September the 21st, informed representatives of the Spokane Chapter that "There is a possibility that the Hanford Area Agreements will be [454] dropped."

Q. Well, did Mr. McCaffree write you a letter telling you he would be at the meeting and wanting to talk with you people?

A. No, sir. I had telephone conversations with Mr. McCaffree prior to his arrival in Spokane.

Q. Oh, I see. And when was the first one that you had?

A. I do not have the date of the telephone conversation.

Q. And did it have to do with these contracts, with his contracting parties and with your Chapter? Was that the subject matter of his conversation?



(Testimony of Sam C. Guess.)

A. I don't quite understand that one, Mr. Etter.

Q. He was representing a group at Hanford and you were representing a group that were writing contracts in Eastern Washington. Now, what was it he first called you about down there? Was it something to do with your respective contractual relationships, or what?

A. He called me and he said that he would like to talk to the labor committee of the Spokane Chapter of A.G.C.

Q. I see.

A. And asked me to arrange a meeting with those people.

Q. All right, so he came up and you had this meeting with him and he told you there was a possibility that those contracts would come to an end or would be terminated, or something like [455] that?

A. That's right.

Q. And thereafter when you commenced your negotiations with the Engineers and the Teamsters, Mr. Rossman and the other gentlemen, you, of course, knew that they were working on the Hanford Project and were working under the Hanford Agreement with respect to their union members who were in that area, is that correct?

A. That is correct.

Q. And you knew that Mr. Rossman's Engineers and the Teamsters were receiving isolation pay and bus transportation, did you not?

A. That is correct.

Q. That is correct. And you also knew that they



(Testimony of Sam C. Guess.)

were parties to the contract with the Hanford contractors negotiating committee, did you not?

A. That is correct.

Q. Beg your pardon?

A. That is correct.

Q. All right. Now, having that in mind and having Mr. McCaffree's statement to you of a possible termination, did you say anything to Mr. Rossman about Mr. McCaffree's visit to you?

Mr. DeGarmo: Just a minute, if your Honor please. I wish to object to that question upon the ground that it is an attempt by these parties to go [456] behind the ruling of the Court to show the negotiations of the parties with respect to this agreement, tend to show what the parties intended.

Mr. Etter: I haven't gone behind the agreement or attempted to vary the terms of it. I am trying to inquire of this man how they came to an agreement first, if I may.

The Court: Well, all right, go ahead. Overruled.

Mr. DeGarmo: I just want the record to show my objection.

The Court: Yes, the record will show it.

Mr. DeGarmo: So I won't be held to a waiver of objection.

Mr. Etter: Yes.

Mr. DeGarmo: Yes, because I can see where he is going very clearly and I am sure he can, too.

Mr. Etter: Well, why don't you wait and see if I get there.

Mr. Carey: Your Honor having overruled the



(Testimony of Sam C. Guess.)

objection, I suppose it calls for no comment from me.

The Court: No, that's right. I might change my mind.

Mr. Carey: Okay.

Q. (By Mr. Etter): Well, in any event, you didn't say [457] anything to these two men that you had talked to McCaffree and that you had wind of a cancellation of this contract, did you?

A. We had a good bit of conversation about Hanford and the various conditions which were down there and we talked on travel pay, which we anticipated that we would get for the first time, and particular reference was made to the payment of isolation pay, the fact that security regulations were more stringent on the area than any other place. We also agreed, and Mr. Rossman made the opening statement, that he would like to rewrite the contract in order that it cover the large jobs, as well as the regular jobs, and the answer from Mr. Murrow, who was at that time acting as chairman of the committee, was that we recognize that we had an agreement that was five years old and needed re-writing, and for that reason we had opened the agreement this year earlier than normal in order to have time to write and to boil down an agreement that would suit all the conditions in our area. The timing and the schedule at which the Hanford Negotiating Committee might terminate their contract was very much in doubt. It could have been anywhere up to a year in termination, but since we



(Testimony of Sam C. Guess.)

didn't know exactly when or under what conditions the agreement would be terminated, we didn't reach any conclusion at [458] any one meeting that we were talking there.

Q. Are you concluded? A. I am.

Q. Now will you answer the question whether or not you advised Mr. Rossman or the representatives of the Teamsters that you had had a visit from Mr. McCaffree and had determined there was a possibility of the termination of the Hanford Agreement?

A. Mr. Etter, that I am not sure.

Q. All right. But you do say that you didn't know when this termination would take place; it might take place in a year? A. That's right.

Q. And I gathered from that, consequently, all you had from Mr. McCaffree was a very general idea of the possibility of a termination, from what you say?

A. A number of possibilities or time schedules were discussed and the very definite conclusion was reached by the negotiating committee for the Spokane Chapter that we would make an effort to secure as many members on the Hanford Project as we could and that we would be ready to handle any situation that came up.

The Court: Court will recess for 10 minutes.

(Short recess.)

Q. (By Mr. Etter): Can we reasonably assume,



(Testimony of Sam C. Guess.)

Mr. Guess, that [459] you didn't have any definite idea about a time of termination, actually?

A. That is correct.

Q. After this September meeting, did you have an opportunity to talk with Mr. McCaffree again, do you recall, prior to the time of the notice which he sent?

A. I talked again with Mr. McCaffree in my office on September 24th.

Q. On the 24th? A. Yes, sir.

Q. Just the one question: After that conference, was there a termination date or a time of termination still indefinite?

A. It was still indefinite at that time.

Q. I assume that with respect to that, you didn't know whether it was going to be four months or five, or whatever it might be, before it was terminated?

A. We did not know the schedule in which it was to be terminated.

Q. Did not know the schedule. Then you entered into these contracts with the Teamsters on the 19th of December and the Engineers on the 24th of December, is that correct?

A. Engineers, I believe it was the 29th.

Q. The contract that is attached here says the 24th. A. All right. [460]

Q. I call your attention to it.

Mr. DeGarmo: I will stipulate it is the 24th.

Mr. Etter: The 24th, yes. The 19th and 24th, all right.



(Testimony of Sam C. Guess.)

Q. To be effective on the 1st, I gather?

A. January 1st, right.

Q. And then it was on the 29th you received a copy of the termination notice which Mr. McCaffree had dispatched on behalf of the Hanford Contractors Negotiating Committee on the 28th of December of 1956 to the respective defendants here?

A. I received a copy of that.

Q. You received a copy of that? A. Right.

Q. And it was only at that time, I gather, that you knew what the effective date of termination was? A. May I add in there, Mr. Etter——

Q. Certainly.

A. ——that during this time between September the 21st or the 24th, whichever it might be, the labor committee of the Spokane Chapter went down to Hanford, at which time we again talked of the possible termination of the Hanford Agreement. There were many things down on the Hanford Project with which our committee members were not familiar. I believe that at that time I had more of [461] a knowledge because of my very frequent conversations with the A.E.C. staff and with Mr. McCaffree of conditions down there, because I wanted my people to be better educated and to have a greater knowledge of conditions at Hanford, and we went down and talked with a group of the contractors and the staff members of A.E.C. who had to do with labor relations.

At that time, we were still not given or not sure of an exact schedule of termination. The statement



(Testimony of Sam C. Guess.)

was made several times that at any time that the termination was made, that they wanted to make it as harmonious as possible, and that in order that we promote that harmony, the members of the Spokane Chapter went back with the intent of doing anything they could and proposed a hardship clause to our agreements that in the event anybody was hurt, that we would sit down and discuss with them and iron out the problems of transition.

Q. Was that prior to the date of the termination?

A. That was prior to the date of the termination of the contract.

Q. You so advised these unions that you were talking with?      A. Yes, sir.

Q. All right. Now, after you received the notice of termination, or copy of the notice of termination, you were still negotiating with the unions, were you? [462]

A. Mr. Etter, you very infrequently get out of negotiations with the unions, you are talking to them about one matter or another all of the time.

Q. The answer is, then, yes, you were still——

A. We were still negotiating, right.

Q. At the same time, were you aware of the fact that the unions were still negotiating with the Hanford Contractors Committee?

A. I was told by Mr. Rossman that he was going to Hanford on one occasion. That is the only information that I had on that.

Q. Well, you knew, did you or did you not, through the first couple of months of 1956 that the



(Testimony of Sam C. Guess.)

Hanford Contractors Negotiating Committee was also submitting proposals for the contract agreement with the interested unions?

A. I do not know that they were submitting proposals.

Q. But haven't you ever seen any of the proposals or the copies of the proposals that were being submitted to the unions during the same time you were negotiating with them by Mr. McCaffree?

A. I have read quite a few documents from Hanford that were written during that period of time, the exact nature of which I couldn't recall right now, but I do know that—let's see—I believe that any statement that I would [463] make in regard to any documents would be not founded on too good of information.

Q. Well, I will just ask you if you have ever seen any of these documents or proposals or are familiar with them at all, by conversation with Mr. McCaffree or otherwise?

A. I had a copy of this document and it came to me after or during the time in which we went to the panel. I also received—let's see—I did receive a copy of this document at some time. I don't remember seeing this copy here.

Q. I see. But at least based on these other two, you were aware that some negotiations, the extent of which you are not familiar with in their entirety, were going on between the Hanford Committee and the interested unions?



(Testimony of Sam C. Guess.)

Mr. DeGarmo: Pardon me, just a minute, Mr. Guess.

I wish at this time, if your Honor please, to interpose an objection to this question upon the ground that I am unable at this moment to see any materiality to the examination which is now being conducted.

I am in a very difficult position, in that counsel has never stated to the Court in response to the Court's question, nor have they indicated by pleadings, just what their defense is in this case, and I have great difficulty in determining what is material [464] and what is immaterial since I don't know what they consider as their defense.

They are asking now about occurrences which took place between the Hanford Contractors Negotiating Committee, assuming that there was such an organization, and some representatives of the unions after January 1st of 1956. It is admitted by requests for admission in this case that the Hanford Works Agreement had ended as of January 1st, 1956, and it is further admitted that no other agreement ever came into existence after that other than the A.G.C. agreements which we have here, and unless counsel can point out—I request the Court to ask counsel to point out what the materiality of this examination is. I just can't determine exactly on what to base my objection, except as I now see it and understand the issues as framed by the pleadings, there is no materiality.

Mr. Etter: In the first place, I might say to your Honor it is preliminary, and if counsel will just give



(Testimony of Sam C. Guess.)

me a chance, I will show him what I am talking about. It won't prejudice him in any way if he wants to strike it and it isn't material.

Mr. DeGarmo: I think I am entitled to know what the issues are in this case at some stage. We are now almost at the close of the plaintiff's case and I [465] still don't know what the defense is in this case.

Mr. Etter: I am not going to argue with counsel about it except to say that it is illustrative of counsel's confusion about the issues, if he wants to put it that way.

He asked this witness, in the first place, if he were familiar with the transportation and the isolation pay situation at Hanford, and when the witness says "yes," then he says, "Give us a history of it." I don't know what he closed off to my examination when he asked this man to give a history of the whole bargaining down there at Hanford, and he asked it himself, I didn't ask it.

Mr. DeGarmo: I didn't ask it in those words.

Mr. Etter: You asked that question.

Mr. DeGarmo: No, sir.

Mr. Carey: I request the reporter to locate that in his record.

Mr. DeGarmo: All right, we are talking now about a question that relates to January 1st, to March of 1956; we are not talking about any historical matter. My objection goes to this question which has to do with some negotiations of a Hanford Contractors Negotiating Committee at a time when



(Testimony of Sam C. Guess.)

it is admitted by the pleadings there was no contract in effect and that none was ever [466] consummated.

Mr. Etter: Well, to shorten it up, I will tell you just what I am after, then you can make your objection.

My position will be, if Mr. Guess admits that he recognizes there were some negotiations going on between the Hanford Committee, that he later and his Chapter later and on the 8th of March advised the defendant Unions here that the bargaining rights of the Hanford Negotiating Committee had been assigned to them and that they therefore would bargain with the Unions for the Hanford Negotiating Committee.

Now, is that plain?

Mr. DeGarmo: Well, so what?

Mr. Etter: What do you mean, "So what?"

Mr. DeGarmo: Let's assume that that is true; still, what has it to do with this case, when we are suing for a breach of contract and the contract is here?

Let's assume that everything Mr. Etter says is true. I think that isn't exactly what happened, but let's assume that the contract——

Mr. Etter: Well, now, you aren't sworn yet. I said I was going to show it.

The Court: Go ahead, finish your statement. [467]

Mr. DeGarmo: I am not questioning your veracity at all, I am just saying that let's assume that everything Mr. Etter says is true, that the rights of bargaining were assigned to this Chapter;



(Testimony of Sam C. Guess.)

we still have the admission here that no contract was ever consummated at Hanford other than the one which we have here as Exhibits 2 and 3. Now, of what probative value can that fact have as bearing upon whether there was a breach of these two contracts? These are the only contracts that they plead or that anybody has plead or that anybody claims were in existence at that time.

Mr. Etter: Now, your Honor, Mr. DeGarmo writes a letter, a lengthy letter, which is, of course, the first written notice anybody ever had he was claiming a breach, and he makes sure to say this:

“As you must be aware, Morrison-Knudsen, Inc., is now, and has been at all times material to any issue with you, a member of and represented as to bargaining rights by the Associated General Contractors of America.”

He has emphasized here that they had the full authority to do all the negotiating and anything that was material to them was vested in these people.

Now, saying that if these people accepted the [468] rights of negotiation of the Hanford Negotiating Committee and that in negotiating with these Unions they correspondingly represented the interests of both that committee and of Morrison-Knudsen, that that isn't binding on him, is that what the point is that he makes in view of his own letter?

Mr. DeGarmo: Well, let's assume that it is.

Mr. Etter: That they had no authority to do one thing, but they had it to do the other?

Mr. DeGarmo: Let's assume that it is. I am not



(Testimony of Sam C. Guess.)

agreeing to what he says, but let's assume that it is true.

Mr. Etter: Well, you wrote the letter.

Mr. DeGarmo: Yes, I wrote the letter.

Mr. Etter: Whether you agree with it or not.

Mr. DeGarmo: Let's assume that it is true and let's assume that they were negotiating; the fact is, and the only fact in this case that there can be no question about, is that there were only two agreements in effect, No. 2 and No. 3, and that is admitted. They admit that no other agreement was ever consummated; therefore, there can't be any other agreement than this.

Now, what can the value of the evidence be except to extend the record?

Mr. Etter: There might be quite a bit of [469] argument in here as to when this agreement became effective after we hear what he has to say.

Mr. DeGarmo: What is the defense in this case?

Mr. Etter: And that has plenty to do with whether or not there is a breach.

The Court: I don't want to cut defendants off from any legitimate defense they may have here, but so far as the Court is concerned, if I may use the expression, it is unclear to me just where all this is leading. It would be more helpful to me if I knew just what you maintain here, as to whether there was another contract that they were operating on rather than these two here, or was there no contract, or this one didn't become operative or it wasn't



(Testimony of Sam C. Guess.)

breached, or do you claim all of those things? What is it?

Mr. Etter: We claim this contract wasn't breached.

The Court: Well, a lot of this testimony, I fail to see the materiality of it as to whether or not there was a breach of these contracts.

Mr. Etter: Your Honor, what you say now I will agree might be ordinarily appropriate if the examination of Mr. Guess had consisted of a very brief proof of things, but I didn't invite counsel to open up the history of all the bargaining. He went into every [470] meeting that was had and what everybody said at every meeting on March so and so and through all of his records. Now I fail to understand why I am restricted to inquire about that to see whether——

The Court: Well, assuming what you say is true, after all, the Court has the responsibility of directing the lawsuit——

Mr. Etter: That's right.

The Court: ——and of keeping it within bounds and within somewhere near the issues that are to be decided. Suppose that Mr. DeGarmo, I am not saying that he would do so, but supposing he has a witness testify about Columbus' discovery of America and what vessels he used, and so on; must I then let opposing counsel go into all the history?

Mr. Etter: I hardly think so.

The Court: Of the expedition, if it has nothing to do with this lawsuit. If he strays off, it doesn't give



(Testimony of Sam C. Guess.)

you the right to do so. If he opens up something that isn't directly material, that doesn't mean that I must let opposing counsel exhaust the other side.

Mr. Etter: I will get right to one thing quickly, because I might as well find out if I am able to use this, your Honor. [471]

Q. Now, you testified to a meeting that you had with these people on the 10th of March of 1956, in which you stated certain things occurred; do you recall that? A. I do.

Q. Now, do you recall submitting that proposal in that language to the Unions at that time?

The Court: What time is this, now?

Mr. Etter: March the 10th.

The Court: Oh.

Mr. Etter: Of 1956.

Mr. DeGarmo: Might I request, if your Honor please, that the document which counsel has handed the witness be marked as an exhibit for identification in order that the record will show what it is he is looking at?

Mr. Etter: Gladly.

The Court: Yes, I think it should be marked. Otherwise, the record won't show what document we are dealing with here.

That will be defendants'—

The Clerk: Defendants' 7, your Honor.

The Court: Seven?

The Clerk: Yes, your Honor, 7.

Q. (By Mr. Etter): I will ask you if that isn't a copy of a document which you prepared and sub-



(Testimony of Sam C. Guess.)

mitted to Mr. [472] Rossman at that meeting of the 10th day of March to which you made reference?

A. This is a copy of the proposal as finally drafted and submitted to the Operating Engineers and the Teamsters.

Q. Is that correct?           A. That is correct.

Mr. Carey: What is the date of it, please?

The Court: March 10th.

Mr. Etter: March 10th, 1956.

The Court: Show it to counsel.

Mr. DeGarmo: Yes, I have seen this, Mr. Etter.

Mr. Etter: Have you?

The Witness: Mr. Etter——

Mr. Etter: Just a moment.

Mr. DeGarmo: I have no objection if they are offering the document.

Mr. Etter: Yes, I am offering it.

The Court: All right, it will be admitted, then, Exhibit 7.

(Whereupon, the said document was admitted in evidence as Defendants' Exhibit No. 7.)

Q. (By Mr. Etter): You proposed here what you refer to as an addendum to existing A.G.C. agreements as follows:

“Effective March 12, 1956, the provisions of [473] A.G.C. agreements will apply on the Hanford Project on all A.E.C. contracts, with the following exceptions \* \* \*”

Is that correct?

A. That is correct.



(Testimony of Sam C. Guess.)

Q. Now, you were making that proposal on behalf of the plaintiff?

A. Making that proposal on behalf of all members of A.G.C.

Q. Well, were you making it on behalf of the plaintiff, specifically?

A. Morrison-Knudsen Company was a member of the A.G.C.

Q. Well, I think that is a very simple question, Mr. Guess: Were you making the proposal on behalf of the plaintiff, Morrison-Knudsen?

Mr. DeGarmo: I submit that the witness has answered the question in the only way it can be answered.

The Court: That was March the 10th, what date?

Mr. DeGarmo: '56.

Mr. Etter: 1956.

The Court: Oh, yes. Well, he said he was making it in behalf of all members.

Mr. DeGarmo: And that Morrison-Knudsen Company was a member.

The Court: Yes, I think what the witness doesn't want to say is he was acting solely and [474] specifically and particularly for Morrison-Knudsen any more than any other member of his organization. Is that what you mean to say?

A. That is correct, sir.

The Court: All right.

Q. (By Mr. Etter): The only proposal you could make on behalf of your members as affecting the Hanford Project was the plaintiff, Morrison-



(Testimony of Sam C. Guess.)

Knudsen, and Jones? They were the only two you had there, is that correct?

A. That is correct.

Q. You mentioned that there was a discussion of the matter of the existing conditions under the Hanford Agreement of bus transportation, is that the fact, and you also stated the proposal that you advanced at one of the meetings in March?

A. One of the meetings in March we made a proposal, yes.

Q. And that proposal was incorporated as a \$2.00 in lieu of transportation proposal?

A. The proposal that you have just submitted was that a travel allowance of \$2.62 a day be paid.

Q. The original contract provided for \$2.00, did it not?

A. The original proposal had made \$2.00 and \$4.00, with 50 per cent to go into effect in 1956 and 75 per cent to go into effect in 1957 and 100 per cent in 1958.

Q. Yes. And the proposal was, of course, that that would [475] provide that the employee would drive his own car from the bus depot through the barricade, isn't that right, behind the barricade?

A. That's right, he would drive it from his home, Mr. Etter.

Q. From his home, I see.

A. To the site of work.

Q. Yes. Previously, the bus transportation had been given from the bus depot, had it not?



(Testimony of Sam C. Guess.)

A. The bus parking area just outside of the barrier, yes.

Q. Yes. And that was a distance ranging from 30 to 60 miles, I gather?

A. I don't have a map and I do not have the distances.

Q. Depending upon the area of work?

A. Depending on where the man came from, I believe that the figure of 57 miles is the maximum over-all distance that could be traveled.

Q. 57 miles?           A. Was in my mind.

Q. And prior to that time, the argument with the Unions was that they were brought to the transportation area and then were transported in, isn't that correct?

A. The men came under their own power, under their own conveyances, up to the parking lot, and then they were transported out there.

Q. And your proposal on the transportation was a substitute [476] for the isolation pay, is that not correct, also?

A. We didn't make it as a substitute for the isolation pay, Mr. Etter.

Q. But you made it with the provision that the isolation pay would be abolished?

A. That is correct.

Q. That is correct. And the Unions' position was that under the existing agreement, that in abolishing it, they would not only lose their pay, that is, their isolation pay, but then would have the additional expense of 10 cents per mile that they claimed



(Testimony of Sam C. Guess.)

would be for this distance of 58 miles or less; that was their argument, wasn't it?

A. Their argument was that they didn't want to take home less take-home pay than they had been used to.

Q. Yes. In other words, it was just an argument between your group and the Unions as to which was the beneficial thing, the existing agreement they had under which they were working at Hanford and the one that you were proposing at that time?

A. That was basically the argument.

Mr. DeGarmo: I want, if your Honor please, to show an objection to the question that Mr. Etter just asked upon the ground it assumes a fact which is contrary to the record in this case. He says the agreement they [477] had. They had no agreement at that time and so stated in the record.

Q. (By Mr. Etter): Well, let's put it this way: The proposal that you made was countered by them with the statement that they were then working under at least an extension of existing conditions—let's put it that way—that provided these things that I have mentioned to you?

A. Will you state that again?

Q. Counsel objected to my use of terms, so I am saying that what they said was they were in better shape the way they were at the present time than to accept that proposal.

A. We made the proposition to them on March the 10th and it was taken back to their members and they made a counter-proposal.



(Testimony of Sam C. Guess.)

The Court: I think I understand the factual basis of the situation. I am not misled by Mr. Etter's question. Go ahead.

Mr. DeGarmo: I didn't think your Honor would be, really.

Mr. Etter: Beg your pardon?

The Court: I say I think I understand the factual basis with reference to the contract.

Mr. Etter: Well, I won't ask it if your Honor [478] understands what it is.

Q. Now, when these agreements were entered into with the Engineers and the Teamsters on the 19th and the 24th of December, respectively, as I gather it at that time there were two members of A.G.C. who had construction work on the Hanford Project, is that correct? A. That is correct.

Q. And during negotiations up until that time, that is, in '55, and through this period when you entered into these two agreements, could you tell me how many employers or contractors there were at various times that are known to you, at least, that were working on the Hanford Project other than the two contractors that belonged to your Chapter?

A. I have answered that question before, Mr. Etter. I do not know how many contractors were working there.

Q. Oh. Would there be 20?

A. I do not know.

Q. Well, at the time that you were conducting



(Testimony of Sam C. Guess.)

these negotiations that led up to the signing of these two agreements, do you recall that there were some discussions that you people had in which the Unions raised the objection or asked you what would happen if they signed your contracts with all of the other contractors who were on the Project and who were not members of A.G.C.? [479]

Mr. DeGarmo: Just a minute. Could I ask the reporter to read that question back?

(Question read.)

Mr. DeGarmo: I wished to be sure that his question related to negotiations, and on the basis of that question, I object to it on the ground that it is incompetent, irrelevant and immaterial, and contrary to the ruling of the Court with respect to the affirmative defense as dealing with negotiations leading up to the signing of the contract.

The Court: I will sustain the objection. I think it is.

Q. (By Mr. Etter): Now, in this exhibit, Plaintiff's Exhibit No. 6, handing you Plaintiff's Exhibit No. 6 and directing your attention to Article 4, when did you become familiar with this Hanford Agreement? You said this came into your possession and I was wondering——

A. Sometime during the first year.

Q. Of '54?

A. I believe it was in '54 that it first came to my attention, and I didn't have a complete copy of it



(Testimony of Sam C. Guess.)

that first year, and the second year I asked for and received a copy of the agreement.

Q. I see.

A. Now, I can check that by finding out what the latest [480] date is on there. There appears to be no date.

Q. But you were familiar with it in 1954?

A. I was familiar with the document itself; as to the contents, I was not.

Q. Well, when did you become familiar with any of the contents?

A. After we got into the discussions of the Hanford Works Area.

Q. When was that, now, what year?

A. In 1955.

Q. When in 1955?

A. Beginning in September is when I started digging, really digging into the proposition.

Q. Beginning in September? A. Yes, sir.

Q. Now, it refers here to an Exhibit 1. You notice it refers here to work covered, the agreement as to work covered refers to Exhibit 1. Can you find Exhibit 1 offhand, Sam?

(Witness Complies.)

Q. That is indicated as Exhibit 1, is it, of the Hanford Works area covered by this agreement, I imagine? A. That is correct.

Q. I see. And you understood it to be such, of course?



(Testimony of Sam C. Guess.)

A. The first time that I ever saw this map, although I had [481] the document in my possession, was yesterday afternoon.

Q. Was yesterday afternoon?

A. Yes, sir. But I have seen many maps of the Benton and Franklin County areas, Adams and Grant.

Q. I see. And although this document was in your possession, you had never seen this?

A. Not consciously, I have never seen it.

Q. Taking in part of Franklin County and part of Benton County and the Hanford Works?

A. I have not consciously seen this map prior to yesterday.

Q. I see. Now, however, you had been familiar with this agreement of 1950 and 1955 marked Defendants' Exhibit 4, had you not?

A. That is correct.

Q. And with Article 1, "this agreement shall cover so and so," and then starting in here, "Spokane, Adams, Whitman, Benton, Franklin, Walla Walla, Asotin, Columbia," and so on?

A. That is correct.

Q. You were familiar with all of that?

A. Yes, sir.

Q. And during this time in 1950 and 1955 for four or five years that you had this Benton County included here, you were familiar in '54, at least, with the operations of Hanford and the Hanford Engineering Works, were you not? [482]

A. That is correct.



(Testimony of Sam C. Guess.)

Q. And that, too, is true, is it not, of the same clauses that appear here in Plaintiff's Exhibits 2 and 3; in other words, the description of the counties is the same, Whitman, Benton, Franklin?

A. That is correct.

Q. I mean it is exactly the same language in all three? I think one gentleman testified to that yesterday.

A. There is two distinct—or one very distinct difference between this contract and the contract which is in the blue cover, and that is that under the Article 9, Section 3, the Operating Engineers, it says there shall be no special job agreements.

Q. Yes, no special job agreements. Have you an understanding of what that meant?

A. I do. [483]

\* \* \*

Mr. Etter: May we have a continuance until morning? It is 4:30, your Honor.

The Court: Yes, all right, we will adjourn until tomorrow morning at 11. I have some other matters that will take about an hour tomorrow, so we will adjourn until tomorrow morning at 11 o'clock.

(Whereupon, the trial in the instant cause was adjourned until 11 o'clock a.m. Wednesday, June 12, 1957.) [491]



2 o'Clock P.M. Wednesday, June 12, 1957

(Whereupon, the trial in the instant cause was resumed pursuant to adjournment at 4:30 p.m., June 11, 1957, all parties being present as before, and the following proceedings were had:) [493]

\* \* \*

The Court: Before we proceed here, let me say again that I don't wish to retract anything that I said yesterday, although it was near the tag end of the day and even the judges lose their patience sometimes, although they never should, I suppose, but I certainly [496] don't wish to deprive anyone of a defense they may have here, and within reason and if it can be done in fairness to the plaintiff, I think that the issues should be determined upon the evidence rather than upon too critical a construction of the pleadings. I don't wish counsel to keep trying to come in the back door and circumvent the Court's ruling by putting in testimony that applies only to that affirmative defense which has been stricken. However, if in the facts that can be shown here, the documents and the things that these people did, and, to some extent, the things that they said to each other in their conferences, if it appears that even though this contract was made which by its terms applied to the Tri-City area, I think, as a part of Benton County, that if, as a matter of fact, they didn't, the plaintiff didn't proceed under this labor contract which had been negotiated for them and a number of others by this association in Spokane,



if they didn't in fact do that but in fact proceeded under some informal extension of the area agreement, why, I would regard that as a defense and I don't want to preclude you from putting it in.

I had this feeling about it, that perhaps an undue amount of time was being taken on that theory of the case, that there wasn't an application of this [497] contract or use of it or that there wasn't a breach, that so far as that phase of it is concerned, I may be wrong, but it seems to me that there isn't really as much factual conflict as might appear or difference between the parties as might appear from the lengthy cross-examinations that have been made here. I think that this lawsuit mostly is going to be decided upon the documentary evidence, what the parties did, and, as I say, to some extent, what they said to each other in their conferences, although anybody who has had any experience in lawsuits knows that, as juries are instructed, you have to take with caution and a grain of salt somebody's construction of what was said in a conference, a lengthy conference, what Joe said and what Bill said and what somebody else said, particularly when it is controverted. It is a very slippery ground upon which to base important findings, so that the main thing, I think, is the documentary evidence and what was done here and the general background as shown by the evidence.

Now, I hope that may be of some assistance, I don't know. You may proceed. [498]